

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES TO:) Hon. Dan A.
11 CASE TRACK THREE) Polster
12

13 MONDAY, FEBRUARY 15, 2021

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW

16 - - -

17 Remote videotaped deposition of
18 Giant Eagle 30(b)(6) designee Christopher
19 Miller, held at the location of the witness
20 commencing at 10:10 a.m. Eastern Time, on the
21 above date, before Carrie A. Campbell,
22 Registered Diplomat Reporter and Certified
23 Realtime Reporter.

24 - - -

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23 TRIAL TECHNICIAN:

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1 VIDEOPGRAPHER: We are now on
2 the record.

3 My name is Danny Ortega, and
4 I'm the legal videographer for Golkow
5 Litigation Services.

6 Today's date is February 15,
7 2021, and the time is 10:10 a.m.

8 This video deposition is being
9 held in the matter of National
10 Prescription Opiate Litigation MDL,
11 for the United States District Court
12 for Northern District of Ohio, Eastern
13 Division.

14 The deponent today is Chris
15 Miller.

16 All counsel will be noted on
17 the stenographic record.

18 The court reporter today is
19 Carrie Campbell, who will now swear in
20 the witness.

21
22 CHRISTOPHER MILLER,
23 of lawful age, having been first duly sworn
24 to tell the truth, the whole truth and
25 nothing but the truth, deposes and says on

1 behalf of the Plaintiffs, as follows:

2

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. MOUGEY:

5 Q. Good morning, Mr. Miller. My
6 name's Peter Mougey. I represent the
7 plaintiffs in this litigation.

8 How are you doing this morning?

9 A. I'm well.

10 How are you, sir?

11 Q. I'm well. I don't know about
12 anybody else, but I'm having just a tad bit
13 of trouble hearing you.

14 Can you move your mic closer or
15 are you at -- as close --

16 A. How is that, sir? Is that
17 better?

18 Q. That's better, yes.

19 Mr. Miller, you should have a
20 box of documents next to you that have a
21 series of manila folders in them.

22 Do you have those handy?

23 A. I do have the box here,
24 unopened.

25 Q. Okay. Why don't you go ahead

1 and open that up, if you can.

2 MR. MOUGEY: Gina, we just
3 received Mr. Miller's CV, or résumé,
4 so it's -- I don't think you have it.
5 So, Josh, I'm just going to e-mail it
6 to Gina.

7 Gina, is that something you can
8 pull up? If not, I can just do it --

9 GINA VELDMAN: Yes, of course.
10 Just go ahead and e-mail it to me, and
11 I can get it right in.

12 MR. MOUGEY: Okay. All right.
13 Gina, it's on the way from Madison
14 Shelquist from my office.

15 QUESTIONS BY MR. MOUGEY:

16 Q. Mr. Miller, while we're pulling
17 up the document, I just wanted to walk
18 through some of your background, if you
19 would, sir.

20 Okay?

21 A. Sure.

22 Q. And let's start off with
23 school.

24 You went to the University of
25 Pittsburgh, PharmD, correct?

1 A. I went to the University of
2 Pittsburgh where I earned my PharmD, that's
3 correct.

4 Q. Yes.

5 And undergrad as well?

6 A. Undergrad I attended the
7 University of Pittsburgh at Johnstown for my
8 undergraduate requirements to -- for
9 admission to the school of pharmacy.

10 Q. Okay. Great. Thank you.

11 Mr. Miller, for your
12 convenience I have your CV, or your résumé,
13 right here in front of you.

14 Do you see that, sir?

15 A. I do, yes.

16 (Miller Exhibit 3 marked for
17 identification.)

18 QUESTIONS BY MR. MOUGEY:

19 Q. All right. I'll just mark that
20 as Exhibit 3.

21 Your education is at the top of
22 your CV, or résumé, Mr. Miller. And you
23 finished your academic studies at University
24 of Pittsburgh with your PharmD in April
25 of 2008, correct, sir?

1 A. I'm sorry, I didn't -- you said
2 2008, correct?

3 Q. Yes.

4 A. Yes, I did.

5 Q. Okay. And so when you finished
6 school in 2008, you started with Giant Eagle.
7 And actually you were working with them as an
8 intern, right, right before you finished,
9 correct, sir?

10 A. That is correct.

11 Q. And your only prior work
12 history before then was with a -- two other
13 pharmacies that were intern positions while
14 you were in school, correct, sir?

15 A. That is correct.

16 Q. In your experience at Giant
17 Eagle, has -- from -- progressed from intern
18 to staff pharmacist, pharmacy manager to
19 pharmacy district manager, and your current
20 position is pharmacy quality and compliance,
21 correct, sir?

22 A. That is correct.

23 Q. Sir, I would like to just focus
24 on your last two roles from July of 2019
25 until the current time, which are senior

1 manager, pharmacy compliance, and I think the
2 title changed with senior manager, pharmacy
3 quality and compliance.

4 Okay, sir?

5 A. Sure.

6 Just to clarify, the title
7 necessarily didn't change. I just had added
8 responsibilities due to a retirement in the
9 company.

10 Q. Okay. Perfect.

11 Why don't -- just -- would you
12 give me just a brief description of what your
13 day-to-day duties are, your job description
14 as both pharmacy compliance and pharmacy
15 quality and compliance since July of 2019?

16 A. Sure.

17 So with pharmacy compliance,
18 it's making sure that all of our pharmacies
19 in our operating states are following any
20 state or federal requirements, in addition to
21 making sure that any accreditations that we
22 hold are maintained, in addition to assist
23 our wholesaling -- or our wholesaler, our
24 internal wholesaler, to make sure that they
25 keep their accreditation and licensure

1 present, along with licensure of all of our
2 pharmacies, and additional requirements with
3 our wholesaler regarding suspicious order
4 monitoring as well.

5 Q. Sir, let me drill down on a
6 couple of those areas.

7 You mentioned state or federal
8 requirements. In relation to Schedule II
9 through V opiates prescriptions, what does
10 your job include regarding state or federal
11 requirements -- state or federal
12 requirements?

13 A. To -- for clarification, do you
14 mean with the pharmacy, with the wholesaler,
15 or in general?

16 Q. In general. What does your job
17 entail?

18 What you mentioned state or
19 federal requirements in your job description,
20 what does that mean to you in respect to your
21 job day-to-day duties with pharmacy
22 compliance or pharmacy quality?

23 A. Sure.

24 As I had previously stated,
25 it's to make sure that our pharmacies and our

1 pharmacists comply with federal and state
2 regulations.

3 Q. Yes, sir. A little more meat
4 on the bone, so to speak, would be helpful.

5 What do you mean by that?

6 A. To make sure that our
7 pharmacies and our pharmacists comply with
8 state and federal regulations.

9 Q. I get that part, the part
10 they're complying with state and federal
11 regs.

12 But what specifically, state
13 and federal regs, are you referring to?
14 What -- in regard to Schedule II through V
15 prescription opiates?

16 A. To make sure that we follow any
17 state and federal regulation -- or, I'm
18 sorry, let me rephrase that.

19 We follow all federal -- state
20 and federal regulations, no matter if it's
21 regarding opiates or noncontrolled
22 substances.

23 Q. Anything in particular jump to
24 mind this Monday morning?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: What do you mean?

2 QUESTIONS BY MR. MOUGEY:

3 Q. Well, you've mentioned about
4 four times generally that -- to make sure
5 that we comply with state and federal
6 requirements. I get that.

7 What specifically -- what
8 specific state and federal requirements in
9 regard to prescriptions of Schedule II
10 opiates fall under your purview as the senior
11 manager of pharmacy quality and compliance?

12 MR. KOBRIN: Object to form.

13 Asked and answered.

14 THE WITNESS: I'm sorry, Josh,
15 I couldn't understand what you said.

16 MR. KOBRIN: I just objected to
17 form and said it was asked and
18 answered. Don't worry about that.

19 You can answer.

20 THE WITNESS: There's nothing
21 particular that I would -- that comes
22 to mind. We follow all -- part of my
23 responsibility is to make sure our
24 pharmacists and pharmacies comply with
25 all federal and state requirements.

1 QUESTIONS BY MR. MOUGEY:

2 Q. All right. So you've been in
3 this role since -- at least senior manager of
4 pharmacy compliance since July of 2019,
5 correct?

6 A. Correct.

7 Q. And prior to that, you were a
8 pharmacy district manager beginning in July
9 of 2014 until now, correct? I'm sorry, until
10 June of 2019?

11 A. That is correct.

12 Q. And part of that job
13 description included supervision of regional
14 pharmacy operations, correct?

15 A. That is correct.

16 Q. And also part of that job
17 description was monitoring state and federal
18 laws for compliance, correct?

19 A. That is correct.

20 Q. And so, sir, since July
21 of 2014, your job at Giant Eagle has been to
22 ensure that pharmacy operations comply with
23 state and federal laws in respect to at least
24 Schedule II through V opiates. Correct, sir?

25 A. My responsibility would be to

1 make sure that we follow all federal and
2 state regulations.

3 Q. And so, sir, sitting here today
4 in -- with your job description including
5 complying with state and federal regulations
6 in relation to Schedule II through V opiate
7 prescriptions, you can't recall one specific
8 state or federal requirement that your job
9 included to make sure your folks were in
10 compliance?

11 MR. KOBRIN: Object to form.

12 Asked and answered. And this whole
13 line is beyond the scope.

14 And I understand that we're
15 doing a lot of background, and I'm
16 willing to give you some latitude on
17 that, but I don't think we need to
18 kind of rehash the same questions over
19 and over again, as they're all beyond
20 the scope.

21 QUESTIONS BY MR. MOUGEY:

22 Q. One point -- can you point me
23 to one state or federal reg that from June of
24 '14 until now, in relation to Schedule II
25 through V opiate prescriptions, that your job

1 included to make sure Giant Eagle was in
2 compliance?

3 MR. KOBRIN: Object to form.
4 Beyond the scope.

5 THE WITNESS: I can.

6 QUESTIONS BY MR. MOUGEY:

7 Q. Okay. And would that be that
8 you recall?

9 A. Would you like me to start on
10 the federal level or on a particular state?

11 Q. Pick it. You pick where you
12 start.

13 A. On the federal left there's the
14 Controlled Substance Act. There's various
15 FDA requirements regarding prescription --
16 regarding prescription drugs as well,
17 including on the wholesaler side.

18 On the state side, there's --
19 every state that we operate in has various
20 regulations as well, too.

21 Q. And, sir, that's what -- that's
22 to the extent that you recall any specific
23 requirements that your job included
24 overseeing from June of '14 to now?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: I'm sorry, I
2 don't understand your question.

3 Are you asking if I have more
4 specific information?

5 QUESTIONS BY MR. MOUGEY:

6 Q. I'm asking for some specifics
7 other than, we complied with state and
8 federal regulations in respect to Schedule II
9 through V opiates at Giant Eagle.

10 Anything other than CSA, FDA
11 and state regs? Anything specific?

12 MR. KOBRIN: Object to form.

13 THE WITNESS: I'm sorry, I'm
14 not -- are you asking me do I -- can I
15 state individual codes? Is that what
16 you're looking for?

17 I'm not understanding your
18 question.

19 QUESTIONS BY MR. MOUGEY:

20 Q. In your job, your day-to-day
21 duties, complying with state and federal regs
22 as applied to Schedule II through V opiates,
23 prescriptions at Giant Eagle, what specific
24 information can you point me to that you were
25 ensuring Giant Eagle was complying with the

1 applicable rules and regs?

2 A. To kind of reconfirm up what I
3 stated before, we were -- we comply with all
4 federal and state regulations. I'm not sure
5 what you're looking for with a specific
6 answer.

7 Q. When I say "job description,"
8 you understand what I mean by "job
9 description," right?

10 A. I do, yes.

11 Q. And when you show up every
12 morning, whatever time you get there, and
13 you're there all day, your job description
14 includes kind of what you do on a day-to-day
15 basis, right?

16 A. Yes, that's accurate.

17 Q. Can you point me to any
18 information, day-to-day job description, of
19 what types of activities you were ensuring
20 that Giant Eagle complied with all state and
21 federal regs in relation to Schedule II
22 through V opiates?

23 A. So to clarify your question,
24 you mentioned day-to-day activities, not
25 specific regulations; is that correct?

1 Q. We're talking about your
2 résumé, right? Got your résumé up, right?

3 A. I currently do not see my
4 résumé.

5 Q. Okay. Well, we're talking
6 about your job description and what you do
7 every day. Okay? We're pointing to specific
8 language in your résumé like "monitor state
9 and federal laws for compliance."

10 What do you mean on your résumé
11 that you complied or monitored state and
12 federal laws for compliance at Giant Eagle
13 from June of '14 all the way to today in
14 relation to Schedule II to Schedule V
15 opiates?

16 MR. KOBRIN: Objection. Form.

17 THE WITNESS: Just as I stated
18 on my résumé, or on my curriculum
19 vitae, to monitor federal and state
20 regulations for compliance.

21 QUESTIONS BY MR. MOUGEY:

22 Q. All right, we're going to come
23 back to that in more detail.

24 But for now, you also mentioned
25 wholesaler SOMS was part of your job

1 description.

2 What did you mean by wholesaler
3 SOMS in compliance -- in relation to
4 Schedule II through V opiates?

5 MR. KOBRIN: Object to form.
6 Beyond the scope.

7 THE WITNESS: SOMS stands for
8 suspicious order monitoring.

9 QUESTIONS BY MR. MOUGEY:

10 Q. Yes, sir, thank you. And I
11 appreciate that.

12 But what do you mean in your
13 job description? Your day-to-day duties,
14 what did you do from your position as
15 pharmacy district manager, all the way up to
16 senior manager, pharmacy quality and
17 compliance?

18 What were your day-to-day job
19 duties to ensure that the wholesaler
20 suspicious order monitoring systems complied
21 with the applicable federal and state laws?

22 MR. KOBRIN: Object to form,
23 beyond the scope, and misrepresents
24 his prior testimony.

25 THE WITNESS: To clarify your

1 question, my responsibilities of
2 suspicious order monitoring only took
3 place starting in July of 2019.

4 QUESTIONS BY MR. MOUGEY:

5 Q. So the description on your
6 résumé, "monitor state and federal laws for
7 compliance" as the pharmacy district manager
8 did not include anything to do with
9 wholesaler, SOMS, suspicious order monitoring
10 systems and policies?

11 MR. KOBRIN: Object to form.

12 THE WITNESS: There would be a
13 time when the -- at that time the
14 senior -- or manager or senior manager
15 of pharmacy compliance may ask the
16 pharmacy district manager for
17 additional information regarding a
18 specific location.

19 So I wouldn't say that I wasn't
20 involved, but it wasn't on my
21 day-to-day responsibilities.

22 QUESTIONS BY MR. MOUGEY:

23 Q. All right. Your wholesaler
24 SOMS responsibilities. I'm going to take out
25 day to day, so maybe that will make it a

1 litter easier.

2 Your pharmacy -- senior manager
3 pharmacy compliance and pharmacy quality,
4 what did your obligations include regarding
5 wholesaler SOMS?

6 MR. KOBRIN: Object to form.

7 Beyond the scope. Asked and answered
8 in the last question.

9 THE WITNESS: My
10 responsibilities would be to monitor
11 orders for controlled substances
12 placed for our -- with our wholesaler
13 to make sure that they were not of a
14 suspicious nature.

15 QUESTIONS BY MR. MOUGEY:

16 Q. And what did you do,
17 Mr. Miller, to ensure that Giant Eagle
18 complied with the applicable state and
19 federal laws monitoring wholesaler SOMS?

20 A. Reviewed various pieces of data
21 elements in addition to suing an external
22 vendor to assist with that process.

23 Q. And what various pieces of data
24 elements in addition to the external vendor
25 did you do to assist that process?

1 MR. KOBRIN: Object to form.

2 This is well beyond the scope,
3 and it's well beyond the scope of
4 Track 3.

5 I'm going to let this go for a
6 little bit because, Peter, because I
7 think there's some background, but I
8 suggest you move on at a reasonable
9 point because -- Peter, just let me
10 get this on the record.

11 If this becomes about
12 suspicious order monitoring and the
13 issues that were covered in discovery
14 in Track 1, which closed several
15 months ago, then I think we're going
16 to have a problem in this deposition.

17 MR. MOUGEY: Thanks, Josh.

18 I'm just simply asking for a
19 job description, and all I've -- I've
20 gotten answers, "I comply with all
21 state and federal regs."

22 I just asked him, "What did you
23 do?" and I'm going to follow up with
24 the same exact question I just asked,
25 which is very, very simple. What

1 various pieces of data elements in
2 addition to the external vendor did
3 you use to assist you in the process
4 wherein you monitored wholesaler SOMS?

5 MR. KOBRIN: Right. And I'm
6 saying that that very question is
7 really targeted towards the issues
8 that are in Track 1 and that have
9 nothing to do with this litigation,
10 nothing to do with this deposition,
11 and nothing to do with the topics that
12 were noticed for this deposition.
13 This is a 30(b)(6) that is about
14 data --

15 MR. MOUGEY: Thank you,
16 Mr. Miller.

17 MR. KOBRIN: -- reporting and
18 collecting data. So I'm a little
19 concerned.

20 But you're right, it's fair for
21 you to go into background. I'm okay
22 with that. I'm just telling you that
23 I don't want this to be something
24 where I suddenly come out of nowhere
25 and say, you know, we're going to end

1 this deposition.

2 I just -- I don't think this
3 should be the topic of this
4 deposition. I think you'd agree with
5 me on that.

6 So if you're going to go into
7 depth on this and this is going to
8 continue, I'm just saying we're going
9 to have a problem.

10 MR. MOUGEY: Hardly in depth.
11 All we've gotten right now is that "we
12 comply with all state and federal
13 regs."

14 So, Mr. Korbin {sic}, you've
15 just said more in your two or three
16 speaking objections than Dr. Miller
17 has said in the first 20 minutes.

18 QUESTIONS BY MR. MOUGEY:

19 Q. Mr. Miller, again, the question
20 I'm asking, sir, that you can answer, is,
21 what do you mean on your -- in your job
22 responsibilities where you reviewed various
23 pieces of data elements in addition to using
24 external vendor to assist with SOMS review in
25 relation to wholesalers?

1 MR. KOBRIN: Object to form.

2 Beyond the scope.

3 THE WITNESS: We look at
4 current -- we look at trends regarding
5 dispensing quantities of dispensed
6 quantities ordered. We look at
7 ordering patterns, team members that
8 would be ordering, and -- in addition
9 to the vendor that we also utilize to
10 monitor those trends as well.

11 QUESTIONS BY MR. MOUGEY:

12 Q. So is it fair to say in the
13 monitoring of wholesale vendors that you use
14 dispensing data?

15 A. As part of that, that is
16 correct.

17 Q. Amazingly, that's what we're
18 here to talk about today is dispensing data.

19 Out of your folder, if you
20 would please pull 169, what I've marked as
21 Miller Exhibit 1.

22 A. Sorry, Mr. Mougey. You said
23 169, correct?

24 Q. Folder 169. It's a manila
25 folder. 169 is on the label.

1 A. Yes, I see it.

2 Q. Marked this as exhibit --

3 Miller Exhibit 1 --

4 (Miller Exhibit 1 marked for
5 identification.)

6 QUESTIONS BY MR. MOUGEY:

7 Q. -- Mr. Miller, and it's titled
8 "Notice of Document Deposition Pursuant to
9 Rule 30(b)(6)."

10 Do you see that, sir?

11 A. I do, yes.

12 Q. Sir, have you seen this before?

13 A. I've seen it very briefly, yes.

14 Q. Sir, if you would, please turn
15 to page 2 of Miller Exhibit 1.

16 Duty to prepare. Do you see
17 that, sir, at the bottom of the page?

18 A. I do, yes.

19 Q. And the first sentence reads,
20 sir, "The testimony elicited in the
21 deposition represents Giant Eagle's
22 knowledge, not the individual deponent's
23 knowledge."

24 Do you see that, sir?

25 A. I do, yes.

1 Q. Sir, do you understand today
2 that you are here testifying on behalf of
3 Giant Eagle?

4 A. I do understand, yes.

5 Q. And, sir, the answers to your
6 questions, these aren't -- as we go forward,
7 Mr. Miller, the answers to your questions
8 represent responses by the corporation.

9 A. I understand.

10 Q. All right. So instead of
11 having a Mr. Miller jersey on today, you have
12 a Giant Eagle jersey on.

13 Does that make sense?

14 A. It does.

15 Q. And as the representative of
16 Giant Eagle, still under the Duty to Prepare
17 section, you must "conduct a thorough
18 investigation in response to the deposition
19 notice," and that a witness, and that's you,
20 "must be prepared to testify all matters
21 known or reasonably available to the
22 organization."

23 Do you see that, sir?

24 A. I do, yes.

25 Q. And, sir, have you conducted a

1 thorough investigation?

2 A. I believe so, yes.

3 Q. I'm sorry, say that again?

4 A. I believe so, yes.

5 Q. Let me just -- have you -- have
6 you conducted a thorough investigation to
7 prepare yourself on the topics that -- 1 and
8 2 that are listed in the subpoena?

9 A. Yes.

10 Q. So I apologize. I'm getting a
11 lot of -- I'm getting some humming and
12 feedback. Is anybody else?

13 A. I also hear a little humming
14 and feedback.

15 MR. KOBRIN: Does that mean
16 it's coming from me somehow?

17 MR. MOUGEY: I don't know.
18 There's a lot of people on.

19 Is there a way to tell where
20 it's coming from? Maybe it's me.

21 (Discussion off the record.)

22 QUESTIONS BY MR. MOUGEY:

23 Q. So, Mr. Miller, did you
24 interview anyone in preparation, outside of
25 counsel, for -- to prepare for your

1 deposition today?

2 A. I'm sorry, to clarify your
3 question, did you mean talk to anybody
4 without counsel present or outside of talking
5 to counsel?

6 Q. Let's do with counsel present
7 just to be the broader. And I don't want to
8 know what you talked to counsel about.

9 But have you -- did you
10 interview anyone to prepare yourself today
11 for your testimony?

12 A. Yes, I did.

13 Q. And who was it that you spoke
14 with, sir?

15 A. I talked to numerous
16 individuals. Robert McClune.

17 Q. Robert McClune?

18 A. That is correct.

19 Q. All right. And other than
20 Mr. McClune, who did you speak with?

21 A. Joseph Lazzaro.

22 Q. All right.

23 A. Mahesh Murthy. James Cornwell.
24 Steven Mittereder.

25 Q. Can you spell that last one for

1 me?

2 A. To my best that I can,

3 M-i-t-t-e-r-d-e-r {sic}.

4 Q. Pronounce it one more time for

5 me?

6 A. Mittereder.

7 Q. Okay. Great.

8 Anyone else?

9 A. Michael Chappell.

10 Q. Anybody else?

11 A. I believe that's it.

12 Q. Okay. All right. Robert

13 McClure {sic}. Tell us what you spoke with

14 Robert McClure about.

15 MR. KOBRIN: I'm going to

16 object to form. And those

17 conversations happened with me

18 present, so I'm going to ask that -- I

19 understand that that's privileged, and

20 I'm going to tell the witness not to

21 answer that.

22 I'm sure if you want to talk

23 about how long he spoke and other

24 stuff, but I was infinitely involved

25 in those conversations, Peter.

1 QUESTIONS BY MR. MOUGEY:

2 Q. What was the topic that you
3 spoke to Dr. McClure about -- or Mr. McClure,
4 I'm sorry?

5 MR. KOBRIN: We can talk
6 generally about which topics of the
7 two topics, but I don't want you to go
8 beyond the two topics that have been
9 noticed.

10 I can tell you right now I'll
11 stipulate that that's what he talked
12 to them about, was the two topics in
13 the notice. I don't want him to get
14 more specific than that because I
15 think that's privileged.

16 I mean, that may have been what
17 you meant by "topics," but I want to
18 clarify that.

19 So if you want to -- Chris, if
20 you want to look at the topics and
21 tell him which topics you think you
22 talked about {audio interruption} --

23 MR. MOUGEY: No, that's not
24 what I want him to do.

25 You're instructing the witness

1 not to answer what part of his
2 investigation was and his
3 conversations with these individuals?

4 MR. KOBRIN: He can talk about
5 his investigation generally and how he
6 researched this stuff. I don't want
7 him to get into his conversations with
8 individuals that he had with me.
9 Those are conversations with me and
10 other individuals.

11 MR. MOUGEY: I'm not asking
12 about conversations he had with you.
13 I'm asking about conversations --

14 MR. KOBRIN: Okay. Well, if he
15 had any conversations independent of
16 me, he can talk about them if they're
17 related to his preparation for today.
18 But if they were at my instruction or
19 if they were with me, then I think
20 they're privileged.

21 So you can inquire into that.

22 QUESTIONS BY MR. MOUGEY:

23 Q. Were there lawyers present at
24 each one of these individuals you just gave
25 us, at each one of your conversations with

1 those people?

2 A. I'm sorry, are you asking if my
3 conversations with these individuals had
4 counsel present?

5 Q. That's what I'm asking.

6 A. Yes.

7 Q. Explain to me what
8 Mr. McClure's role at Giant Eagle is -- was.

9 A. When he was overseeing pharm --
10 when he had a role within pharmacy, he was
11 overseeing the pharmacy procurement team,
12 which involves pharmacy analytics.

13 Q. And when was Mr. McClure with
14 Giant Eagle?

15 A. I didn't look at his personnel
16 file. I don't have the specific ranges. But
17 he's still with Giant Eagle.

18 Q. Who identified these people for
19 you to go talk to?

20 A. Counsel.

21 Q. Do you know Mr. McClure?

22 A. I do, yes.

23 Q. That's a bad question.

24 Do you know Mr. McClure outside
25 of the meeting you had in preparation for

1 today?

2 A. Do you mean do I know

3 Mr. McClune socially?

4 Q. Outside of the meetings you had
5 to prepare for your testimony today, do you
6 know Mr. McClure {sic}?

7 A. Yes.

8 MR. KOBRIN: It's McClune,
9 Peter.

10 QUESTIONS BY MR. MOUGEY:

11 Q. Is there still a
12 pharmacy procurement team, Mr. Miller?

13 A. There is, yes.

14 Q. And who is in charge of the
15 pharmacy procurement team now?

16 A. Currently it is Aaron Hart.

17 Q. And do you have an
18 understanding of what the pharmacy
19 procurement team does at Giant Eagle?

20 A. I do.

21 Q. And what is -- what is the
22 scope of that department within Giant Eagle?

23 A. Currently it's for ordering --
24 ordering prescription medications for use in
25 our warehouse.

1 Q. Outside of ordering, what else
2 does pharmacy procurement do within HBC?

3 MR. KOBRIN: Object to form.

4 Beyond the scope.

5 THE WITNESS: I'm sorry, do you
6 mean within Giant Eagle?

7 QUESTIONS BY MR. MOUGEY:

8 Q. Yes.

9 A. They also have -- they also
10 maintain a few individuals that complete
11 analytics.

12 Q. What do you mean by
13 "analytics"?

14 A. Creating --

15 MR. KOBRIN: Object to form.

16 Beyond the scope.

17 THE WITNESS: Creating reports.

18 QUESTIONS BY MR. MOUGEY:

19 Q. What kind of reports?

20 MR. KOBRIN: Object to form.

21 Beyond the scope.

22 THE WITNESS: Analyzing
23 prescription -- prescription data,
24 ordering data.

25

1 QUESTIONS BY MR. MOUGEY:

2 Q. When you say "analyzing
3 prescription data," what do you mean,
4 Mr. Miller?

5 MR. KOBRIN: Object to form.
6 Again, we're kind of treading
7 threading into new territory.

8 You can answer, if you know,
9 Chris.

10 THE WITNESS: Are you looking
11 for specifics or generality,
12 Mr. Mougey?

13 QUESTIONS BY MR. MOUGEY:

14 Q. Well, right now I'm just asking
15 you to explain what you mean in analyzing
16 pharmacy data within the procurement team.

17 MR. KOBRIN: Again, object to
18 form. Beyond the scope.

19 But you can answer to the
20 extent that you know, Chris.

21 THE WITNESS: We look at drug
22 utilizations for potential orders or
23 what orders we might -- or what
24 prescriptions we may want to move into
25 our warehouse based on cost, in

1 addition to drug usage at pharmacies,
2 based on, you know, if we need to
3 increase or decrease supply within our
4 warehouse.

5 QUESTIONS BY MR. MOUGEY:

6 Q. When you say "drug
7 utilizations," what do you mean, Mr. Miller?

8 MR. KOBRIN: Object to form.
9 Beyond the scope.

10 THE WITNESS: The quantity of
11 drugs dispensed.

12 QUESTIONS BY MR. MOUGEY:

13 Q. Is that similar to a drug
14 utilization review, or DUR?

15 A. It is not.

16 Q. Is pharmacy procurement, as far
17 as you understand, more of a logistics
18 managing supply and demand?

19 A. That's a way to look at it,
20 yes.

21 Q. Is there any compliance role
22 within pharmacy procurement analyzing
23 pharmacy data in relation to the state and
24 federal regs you mentioned earlier?

25 MR. KOBRIN: Object to form.

1 Beyond the scope.

2 You can answer, if you know,

3 Chris.

4 THE WITNESS: There's

5 compliance pieces to ensure that

6 paperwork is completed and filed.

7 QUESTIONS BY MR. MOUGEY:

8 Q. What kind of compliance pieces,

9 Mr. Miller? Complying with what?

10 MR. KOBRIN: Object to form,

11 asked and answered, and beyond the

12 scope.

13 You can answer, if you know,

14 Chris.

15 MR. MOUGEY: Josh, can I ask

16 you a favor? If -- can we just have a

17 standing -- if you're going to make

18 objections to form and objections to

19 scope, obviously that's within your

20 purview.

21 But if you could just hold back

22 the direction to answer, and let's --

23 can we just conclude that Mr. Miller

24 can answer, and if you instruct him

25 not to answer, obviously then we can

1 deal with that as it comes up. But
2 just to shorten down your objections.

3 MR. KOBRIN: I think that's
4 reasonable in some situations. There
5 may be situations in which I want to
6 express something to Mr. Miller, and
7 I'd rather do it on the record -- I
8 mean, I'd rather make a record of it
9 because I want him to know that he's
10 good to answer it.

11 MR. MOUGEY: I appreciate that,
12 Mr. Kobrin, but I also don't want
13 you-all interspersed in my transcript,
14 which right now you are. And you've
15 given multiple speaking objections.

16 If you could please limit your
17 objections to the proper objection,
18 that would be fantastic. And also,
19 just shorten down the -- addressing
20 the witness whether to answer or not
21 so I don't have so much of you on the
22 transcript.

23 QUESTIONS BY MR. MOUGEY:

24 Q. So, Mr. Miller --

25 MR. KOBRIN: I'll do my best on

1 that, Peter, but as you know, the
2 special master has already decided
3 that some speaking objections, similar
4 or if not identical to the ones I've
5 made, are completely acceptable in
6 this case. And I don't think I've
7 actually made any speaking objections
8 beyond the fact that I've told the
9 witness that he can answer. So if you
10 don't want me to do that, I won't do
11 that going forward as much unless I
12 see a necessity for it.

13 But I think it's also fair to
14 say that the witness was not prepped
15 on these issues because they're well
16 beyond the scope of the topics. So he
17 may not know them or he may not feel
18 comfortable doing his own personal
19 testimony about them because, as
20 you've told him, he's wearing a Giant
21 Eagle jersey, not a Chris Miller
22 jersey.

23 MR. MOUGEY: Certainly. And
24 that was about as clear a speaking
25 objection as I can get. You've said

1 more than Mr. Miller in the last 30 or
2 45 minutes. So let's just go back to
3 Mr. Miller.

4 QUESTIONS BY MR. MOUGEY:

5 Q. Let me see if I can -- is there
6 any compliance role within pharmacy
7 procurement analyzing pharmacy data in
8 relation to the state and federal regs that
9 you identified earlier?

10 MR. KOBRIN: Object to form.
11 Object to beyond the scope.

12 THE WITNESS: Mr. Mougey, are
13 you asking with the analysis or with
14 the actual procurement?

15 QUESTIONS BY MR. MOUGEY:

16 Q. Well, you mentioned earlier
17 when testimony was that in part of the
18 pharmacy procurement role that they analyze
19 data, correct, sir?

20 A. That is correct.

21 Q. So what I'm asking you, sir,
22 is, was there any compliance role within
23 pharmacy procurement and the data that it
24 analyzed in relation to compliance with state
25 and federal regs?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: With regarding
3 procurement -- with regarding
4 procurement, there is recordkeeping
5 aspects insofar as making sure the DEA
6 forms 222 are complete. Invoices are
7 marked as received and complete.

8 QUESTIONS BY MR. MOUGEY:

9 Q. What role was Mr. Murphy {sic}
10 in at Giant Eagle?

11 A. Mr. Murthy oversaw the
12 individuals who run analytics. So he was
13 manager of pharmacy analytics, I believe his
14 title was.

15 Q. Part of our job today,
16 Mr. Miller, between you and I, is to get our
17 lingo down as much as we can and we're saying
18 the same things.

19 When you say "run analytics,"
20 what do you mean?

21 A. The analysis of the pharmacy
22 data.

23 Q. Okay. So your definition of
24 analytics is analysis of pharmacy data.

25 What pharmacy data are you

1 referencing in respect to Mr. Murthy and
2 running analytics?

3 MR. KOBRIN: Object to form.
4 Beyond the scope.

5 THE WITNESS: Any drug usage.
6 It could be drug dispensing, drug
7 ordering, insurance use or
8 insurance -- percentage of what
9 particular type of insurance is being
10 used. It would be the analysis of
11 pharmacy ordering and dispensing data
12 in general.

13 MR. MOUGEY: I'll tell you
14 what. I'd like to take a few-minute
15 break, and let's figure out what the
16 humming and the noise is in the
17 background.

18 MR. KOBRIN: Is that still on?

19 MR. MOUGEY: Yes, I'm still --

20 MR. KOBRIN: Is that still
21 bothering all of you guys? Hold on
22 one second. Let me hit mute and see
23 if it's --

24 MR. MOUGEY: It's bothering me.

25 MR. KOBRIN: I'm afraid it's my

1 machine, because I'm not hearing it.

2 Can you hold on one sec?

3 MR. MOUGEY: It's like feedback
4 almost.

5 (Discussion off the record.)

6 MR. MOUGEY: Let's go ahead and
7 go off for a second.

8 VIDEOGRAPHER: The time right
9 now is 10:48 a.m. We are off the
10 record.

11 (Off the record at 10:48 a.m.)

12 VIDEOGRAPHER: The time right
13 now is 11 a.m. We are back on the
14 record.

15 QUESTIONS BY MR. MOUGEY:

16 Q. All right. Mr. Miller, the
17 second person I think you identified you met
18 with is -- his first name was Joseph?

19 A. Joseph Lazzaro.

20 Q. Mr. Lazzaro.

21 What was Mr. Lazzaro's role at
22 Giant Eagle?

23 A. Mr. Lazzaro oversees the
24 information technology of pharmacy.

25 Q. And Mr. or Mrs. Murphy?

1 A. Mr. Murthy, Mahesh Murthy, was
2 the manager or senior manager of pharmacy
3 analytics.

4 Q. Is pharmacy analytics a
5 different group or department than pharmacy
6 procurement?

7 A. If falls under the pharmacy
8 procurement team.

9 Q. Okay. And I think I have James
10 or Jane Cartwall {sic}?

11 A. James Cornwell?

12 Q. Okay.

13 A. He is the manager of pharmacy
14 support. He is under Mr. Lazzaro.

15 Q. And what's your understanding
16 of pharmacy support? What is their role?

17 A. To assist with any dispensing
18 software issues and support the stores with
19 any technological glitches.

20 Q. And Steven Mittereder?

21 A. He is a technologies support
22 representative outside of pharmacy who helps
23 support the -- our data warehouse.

24 Q. Who helps support the what?
25 I'm sorry?

1 A. It's okay. Are you getting --
2 are you getting an echo still?

3 Q. Just your audio quality is
4 not -- is not good.

5 And I think, quite frankly,
6 it's probably a little bit of combination of
7 what we identified earlier, and my guess is
8 it's also the quality of the mic. So we'll
9 just have to deal with it.

10 Okay. What I believe you said
11 is that his role was technology support
12 outside of pharmacy who helps support our
13 data warehouse.

14 Is that what you said, sir?

15 A. That is correct.

16 Q. Okay. And then I think the
17 last individual you identified was Michael --
18 is it Chipperole {sic}?

19 A. Chappell.

20 Q. Chappell?

21 A. Yes, sir.

22 Q. And what was Michael Chappell's
23 role?

24 A. He oversees pharmacy
25 operations.

1 Q. Did you meet with these people
2 individually or as a group?

3 A. Mostly with a group.

4 Q. Mostly with a group.

5 And did you meet with any of
6 them individually?

7 A. Not that I recall. Most of
8 them were all in conversations.

9 Q. Okay. So when you say "most of
10 them" were in a group, but you don't recall
11 any individual, you don't recall any
12 individual meetings?

13 A. I don't recall an individual
14 meeting with any particular individual,
15 correct.

16 Q. And when we say "as a group,"
17 do you mean each of these people were present
18 at each of the meetings?

19 A. Not everybody was present at
20 each meeting. They were -- group meetings
21 occurred throughout different times.

22 Q. Okay. So these meetings were
23 with different -- different people in this
24 group?

25 A. There were different meetings

1 with the different peoples in this group at
2 different times.

3 Q. How many different meetings
4 were there?

5 A. To my best recall, more than
6 five.

7 Q. Okay. "More than five" meaning
8 50 or "more than five," maybe six?

9 A. I'd say more than five. I'm
10 guessing less than ten. I didn't count --

11 Q. Okay. More than five, less
12 than ten.

13 And how long were the meetings
14 on average?

15 A. They ranged in length. I'd say
16 on average, two to three hours.

17 Q. Did you take notes during these
18 meetings?

19 A. Under direction of counsel,
20 yes.

21 Q. And do you have those notes
22 with you today?

23 A. I do not currently in front of
24 me.

25 Q. Do you have access to them

1 wherever you are, your office or house?

2 A. I do.

3 MR. KOBRIN: I'm going to
4 object to form. Those were taken, and
5 they were taken with my guidance, and
6 I was on all those calls. They were
7 Zoom calls, just for clarity, Peter.

8 MR. MOUGEY: And, Mr. Kobrin,
9 is it your direction today to tell --
10 advise Mr. Miller not to answer any
11 questions about any of the
12 conversations that occurred when
13 Mr. Miller was educating himself to
14 fulfill his obligations as the
15 corporate rep?

16 MR. KOBRIN: No. I think there
17 are probably zones of questioning,
18 such as you've just conducted
19 effectively here, that don't get to
20 privileged information. It's only the
21 privileged content that I'm concerned
22 about.

23 MR. MOUGEY: Well, I just asked
24 him what these folks' role was. I
25 asked earlier what the

1 conversations -- what he discussed
2 with each of these individuals, and
3 you instructed him not to answer.

4 Is that going to be -- if I
5 start asking any questions about what
6 was discussed during these group
7 meetings, is your instruction to
8 Mr. Miller going to be not to
9 answer -- not to answer these
10 questions?

11 MR. KOBRIN: No, I think I
12 said -- and if I wasn't clear enough,
13 I apologize. But I think I said that
14 you could ask him which topics he
15 spoke about, but I stipulated that
16 conversations were about the two
17 topics.

18 If you want to get into
19 generalities about what areas they
20 discussed with him, that could be
21 allowable, but I think you're treading
22 really close to the privilege. And so
23 I don't want him to answer without
24 recognizing that he's providing
25 privileged information.

1 So I'm a little wary of you
2 getting into conversations with myself
3 and my client and client
4 representatives that I think are
5 clearly privileged, and so I would
6 suggest --

7 MR. MOUGEY: I'm not asking
8 about -- Mr. Korbin -- and I feel like
9 I'm wasting a lot time on this, more
10 than we have in any of these other
11 four of these.

12 Mr. Kobrin, I haven't --

13 MR. KOBRIN: Kobrin.

14 MR. MOUGEY: I haven't asked
15 any questions about conversations with
16 you. And I'm not -- I don't care if
17 you were there or not.

18 What I'm asking you is, in
19 your -- what you directed Mr. Miller.
20 And I specifically understood what you
21 told Mr. Miller was if he wanted to
22 tell me whether it was Topic 1 or
23 Topic 2, he can answer that, but
24 outside of that he wasn't going to
25 answer any questions. Maybe you had

1 an opportunity over our five-minute
2 break to go consult one of your
3 colleagues.

4 But the fact of Mr. Miller's
5 conversations as part of his
6 obligation to educate himself today to
7 testify, your instruction to
8 Mr. Miller today is not to answer
9 specific questions about what was
10 discussed in these meetings with other
11 Giant Eagle employees, correct?

12 MR. KOBRIN: Let me be clear
13 here, Peter.

14 MR. MOUGEY: Yes.

15 MR. KOBRIN: I don't want to
16 waste a lot of time.

17 MR. MOUGEY: Well, it's too
18 late.

19 MR. KOBRIN: I was involved in
20 asking and providing information
21 during all of these conversations. I
22 was not a mere bystander.

23 So any of these conversations
24 were privileged, all right? All of
25 these people were also client

1 representatives. They all work for
2 Giant Eagle, as does Mr. Miller, and
3 Giant Eagle is my client.

4 MR. MOUGEY: All right.

5 MR. KOBRIN: So if you want to
6 try and ask questions, you can see if
7 you can ask them without breaching the
8 privilege. But I would request that
9 you be careful in doing so because I
10 think we can both recognize that those
11 conversations with me and my clients
12 are privileged.

13 MR. MOUGEY: What I'm asking
14 and what I believe that you already
15 instructed the witness to answer --
16 and I'd like to move on from here.
17 I'm not asking about Mr. Miller's
18 conversations with you. I've never
19 asked him about any conversations with
20 you.

21 What I'm asking is, I'd like
22 to -- I'd like to ask Mr. Miller about
23 questions he had with each of these
24 individuals, conversations he had with
25 each of these individuals, and the

1 specific information discussed.

2 The fact that you're present at
3 those meetings does not make those
4 meetings privileged.

5 And I just want you to -- I
6 want to clearly state on the record, I
7 don't want to waste any time, because
8 I want to come back later if I need
9 and preserve whatever rights we have.

10 But other than pointing to 1 or
11 2, Topics 1 or 2, my understanding is
12 you've told -- you've instructed
13 Mr. Miller not to answer specific
14 questions about what was specifically
15 discussed during these informational
16 meetings when he was educating himself
17 for today's testimony.

18 MR. KOBRIN: I said you can try
19 and ask what he generally discussed,
20 but I've also made clear that your
21 representation of those conversations
22 is inaccurate. I was not a mere
23 bystander. I was answering and asking
24 questions during all of those
25 conversations. So the bulk of those

1 conversations, under law in federal
2 court, are privileged.

3 If you want to try and get more
4 specific than the topics, you can try,
5 and you can see if those questions
6 don't breach the privilege.

7 My advice to you was that you
8 ask on Topics 1 and 2 because I will
9 concede that those questions don't
10 breach the privilege, and I won't
11 interfere or object. And I know you
12 don't want me objecting.

13 So if you want to try and go
14 beyond Topics 1 and 2, you can try.
15 I'm telling you right now, I'm not
16 going to assert the privilege if you
17 ask purely about whether they talked
18 about Topic 1 or 2.

19 Does that make sense?

20 QUESTIONS BY MR. MOUGEY:

21 Q. Mr. Miller, what specific
22 topics -- what did you discuss with
23 Mr. McClure {sic}?

24 A. The maintenance of our --

25 MR. KOBRIN: Object to form.

1 And Chris, I would just ask you
2 to please be careful not to breach the
3 privilege, share any information in a
4 conversation that I was involved in
5 with you or Mr. McClune.

6 QUESTIONS BY MR. MOUGEY:

7 Q. What did you discuss with
8 Mr. McClure {sic} specifically?

9 A. How our data is stored.

10 Q. What did you discuss
11 specifically with Mr. Lazzeer?

12 A. Lazzaro? To clarify?

13 Q. Yes, Lazzaro, Lazzeer. Yes,
14 sir.

15 A. I'm not aware of a Mr. Lazzeer,
16 but Mr. Lazzaro we talked about the record
17 and the storage of our data.

18 Q. And Mr. Murthy?

19 A. The same as the previous
20 answer, the recording and the maintenance of
21 our data.

22 Q. And Mr. Cornwall {sic}?

23 A. The same answer. The
24 maintenance and storage of our data.

25 Q. Your conversations with each of

1 these people were about the maintenance and
2 storage of our data?

3 A. That is correct.

4 Q. Mr. Miller, let's see if you
5 and I can get some lingo down, just kind of
6 start building out what our goals are for
7 today.

8 If I -- if I use the term "user
9 interface," does that make sense to you?

10 A. Do you mean the dispensing
11 software -- the recordkeeping
12 system software?

13 Q. I'm just asking you -- sir,
14 just focus on the question I asked you.

15 Do you know what a user
16 interface is?

17 A. I'm asking a clarifying
18 question, sir.

19 Q. Do you know what a user
20 interface is?

21 A. Again, I'm asking a
22 clarification question.

23 Are you referencing the
24 recording and dispensing software?

25 Q. You understand this litigation

1 is about opiates, right, sir?

2 A. I do.

3 Q. It's about opiate
4 prescriptions, correct, sir?

5 A. That's my general
6 understanding, yes.

7 Q. And you understand we're here
8 today to talk about data and maintenance,
9 collection, of opiate data kept at Giant
10 Eagle, right?

11 A. Yes.

12 Q. Okay. I'm glad we cleared that
13 up.

14 So a user interface in that
15 context, do you understand what that is?

16 A. And again, I'm asking a
17 clarification question, if you're referring
18 to the recording and dispensing software.

19 Q. What do you mean by the word
20 "software"?

21 A. A computer program.

22 Q. A computer program.

23 What software, computer
24 program, was used at the store level by the
25 pharmacist and the teams?

1 A. We currently use the PDX
2 product Workflow, EPS Workflow.

3 Q. I'm sorry, you went out on me
4 again, sir.

5 PDX product Workflow, EPS
6 Workflow? Is that what you said?

7 A. That is correct. The product
8 is by -- a product by PDX, and it's called
9 EPS Workflow.

10 Q. Now, if I use the -- if I use
11 the term "local" or "store level," what does
12 that mean to you?

13 A. Just that. Information or
14 storage at the store level.

15 Q. Okay. So you referred to just
16 the PDX as just PDX?

17 A. That's how we refer to it
18 in-house, that's correct.

19 Q. Okay. So is any pharmacy data
20 stored at the store level?

21 A. Yes.

22 Q. And explain -- if I use the
23 word "data architecture" or "architecture,"
24 does that make sense to you?

25 A. It does.

1 Q. And what does that mean to you,
2 Mr. Miller?

3 A. The data that would be
4 stored -- the encompassing data that would be
5 stored at the local level.

6 Q. Did you use the word -- was it
7 "counseling" data?

8 A. That could be data that would
9 be stored at the local level.

10 Q. What -- when you said "data," I
11 thought you said "counseling."

12 What did you -- what was your
13 answer to when I asked about what
14 architecture means to you, data architecture?

15 A. I believe my response was
16 encompassing data, not counseling data.

17 MR. MOUGEY: I'll tell you
18 what, Mr. Kobrin, let's do this. I'm
19 not going to do this all day. Okay?
20 I'm having trouble --

21 MR. KOBRIN: I can hear him.

22 MR. MOUGEY: Well, the court
23 reporter is having trouble and I'm
24 having trouble, and --

25 MR. KOBRIN: Hold on. Hold on.

1 Hold on. Calm down, Peter.

2 MR. MOUGEY: No, no, no --

3 MR. KOBRIN: I'm trying to
4 resolve this, because the couple times
5 here you've said you cut out, he's
6 cutting out for me. And I don't know
7 if that's because you guys are further
8 away.

9 Is there anyone on tech from
10 Golkow who would know why I'm not
11 having this problem and you are?

12 MR. MOUGEY: Carrie's been
13 doing this a long time, and I've sat
14 through enough depositions that I know
15 it's almost verbatim what comes out of
16 the witness' mouth, and I think both
17 of us are having trouble. So
18 whether --

19 MR. KOBRIN: Hey, Carrie --

20 MR. MOUGEY: Hold on a second.

21 MR. SHKOLNIK: Can we go off
22 the record while this conversation
23 happens so we're not eating up more of
24 this time?

25 MR. MOUGEY: I'll tell you

1 what. You --

2 MR. KOBRIN: I want to see --

3 MR. MOUGEY: Hold on a second.

4 MR. KOBRIN: You seem to be
5 accusing us of something here.

6 MR. MOUGEY: No one is accusing
7 you of anything, but I'm not going to
8 conduct this depo like this. So as
9 Hunter suggested, let's go off the
10 record. I'm okay with trying to fix
11 this problem, but I've pretty much
12 wasted almost an hour with trying to
13 fix this stuff.

14 So let's go off the record
15 and --

16 MR. KOBRIN: Before we go off
17 the record -- hold on. Before we go
18 off the record, can I just ask Carrie:
19 Where are you?

20 COURT REPORTER: I'm in
21 St. Louis, Missouri.

22 MR. KOBRIN: Okay.

23 GINA VELDMAN: It has nothing
24 to do with our geographical location.

25 MR. MOUGEY: Absolutely not.

1 MR. KOBRIN: Okay. Then I want
2 the record to reflect I'm not having
3 this problem, and I don't know if the
4 witness is having this problem. I
5 don't deny that you are having a
6 problem. I understand. I'm not
7 disputing that. It's just not
8 something that we're experiencing --
9 or I'm experiencing.

10 Chris, are you experiencing
11 this problem?

12 MR. MOUGEY: I'm asking -- I'll
13 tell you what. This is --

14 MR. KOBRIN: We can go off the
15 record.

16 MR. MOUGEY: We're off the
17 record. Thank you.

18 VIDEOGRAPHER: The time right
19 now is 11:17 a.m. We are off the
20 record.

21 (Off the record at 11:17 a.m.)

22 VIDEOGRAPHER: The time right
23 now is 11:24 a.m. We're back on the
24 record.

25

1 QUESTIONS BY MR. MOUGEY:

2 Q. All right. Mr. Miller, in
3 response to my last question, you used the
4 term "encompassing data."

5 What did you mean, sir?

6 A. The all-encompassing data that
7 would be stored on the local server from the
8 computer software system.

9 Q. And what is included in that
10 all-encompassing? Does that mean every data
11 piece that you-all collect at a store level
12 at Giant Eagle is stored at the local level?

13 A. That is correct.

14 Q. All of it?

15 A. Everything that would be
16 inputted into the software system, yes.

17 Q. So everything that's put in --
18 when you say "the software system," I want to
19 make sure we're saying the same thing.

20 PDX, correct?

21 A. That is correct.

22 Q. So all information, all data,
23 that is put into PDX is stored at the local
24 level?

25 A. Yes, that is correct.

1 Q. And by local level, we mean at
2 the store level, correct?

3 A. That is correct. Under local
4 server level at the store.

5 Q. And so that was my next
6 question.

7 So there is a server at each of
8 the local stores, correct?

9 A. Yes, that is correct.

10 Q. And I believe you already
11 identified that there's also a data
12 warehouse, correct?

13 A. That is correct.

14 Q. What do you mean when you
15 say -- when you use the term or terms "data
16 warehouse"?

17 A. It's a remote server that is
18 used to store -- used to store data for the
19 company.

20 Q. And where is that remote server
21 located?

22 A. There are two. There is one at
23 our corporate headquarters, and there is one
24 at a backup facility, which is a distribution
25 center for the company.

1 Q. So one at headquarters and one
2 at a distribution center.

3 Is that -- do I have that
4 right?

5 A. That is correct. There's a
6 primary and then a -- and then a backup as a
7 secondary.

8 Q. Okay. Are you familiar with
9 the term "archive"?

10 A. I am, yes.

11 Q. And what do you understand an
12 archive to mean?

13 A. To my knowledge, archive means
14 historical records or to back up historical
15 records.

16 Q. All right. So let's track the
17 flow of data from the entry at PDX to the
18 local level, to the data warehouse, and if in
19 fact there's another step to archive.

20 Okay?

21 A. Sure.

22 Q. All right. So let's just start
23 with a -- an easy example. Let's use a hard
24 prescription and -- a paper prescription.

25 You know what I mean, right?

1 A. I do, yes.

2 Q. All right. So then there's
3 some patient profile information at the store
4 level that's inputted for a new hardcopy --
5 new patient with a hardcopy prescription,
6 right?

7 A. That's correct.

8 Q. And that information is
9 imported or input through PDX, correct?

10 A. That is correct.

11 Q. And then that same information
12 then is stored at the local level, correct?

13 A. That is correct.

14 Q. And if I use the term "patient
15 profile," does that make sense to you?

16 A. It does make sense.

17 Just to clarify, when we refer
18 to patient profile, does that include the
19 prescription data or just the patient
20 demographics?

21 Q. You tell me.

22 A. When I think of generally as a
23 patient profile, I traditionally think of the
24 patient demographics, with the prescription
25 profile being a part or -- a part of the

1 patient profile.

2 Q. Okay. So if you and I use
3 "patient profile," you mean that to include
4 the demographics about the patient and the --
5 and prescription information, correct?

6 A. That's correct. Just wanted to
7 make sure we're on the same page when we're
8 talking lingo today.

9 Q. Sure. I appreciate that.
10 So the patient profile
11 information that's put in through PDX and
12 goes to the local server, how fast is that
13 information available on PDX at the local
14 level? Instantaneously?

15 A. There are instantaneous backups
16 to the local server.

17 Q. Okay. But that's -- what I'm
18 asking is a little different.

19 Is there only one portal or one
20 computer at each Giant Eagle pharmacy or are
21 there more than one?

22 A. I'm sorry, you mean servers or
23 computers? I just wanted to clarify what you
24 meant.

25 Q. Computers.

1 A. Yeah, there are multiple
2 computers within a pharmacy.

3 Q. So if a technician is putting
4 information, patient profile information,
5 into PDX, how fast is that information
6 available to other computers at a Giant
7 Eagle?

8 A. Within the same pharmacy,
9 correct?

10 Q. Same pharmacy.

11 A. As soon as the profile is
12 saved, meaning that the profile is completely
13 data entered, it's viewable instantaneous on
14 other computers.

15 Q. Okay. And let's stick with
16 that same patient profile for a new patient
17 inputted through PDX. How frequently is the
18 local server information then exported to the
19 data warehouse?

20 A. Nightly.

21 Q. Nightly.

22 And now is that the
23 all-encompassing data that we referenced
24 earlier?

25 A. No, there are certain tables

1 within data warehouse that collect data, so
2 not all the information -- not all the
3 information locally is backed up on the data
4 warehouse.

5 Q. All right. We're going to come
6 back to which information is backed up on the
7 data warehouse.

8 Okay?

9 Once a patient profile is
10 imported through PDX and is stored nightly,
11 at least the subset on the data warehouse,
12 can other Giant Eagle pharmacies see the
13 information on the -- stored at the data
14 warehouse?

15 A. I just wanted to clarify the
16 question. Do stores have access to the data
17 warehouse or can stores see other patient
18 profiles?

19 Q. All right. Let's do it this
20 way.

21 Data warehouse -- I'm sorry.
22 Patient profiles imported on PDX at the store
23 level. Can other Giant Eagle pharmacies view
24 the patient profile on that same day that
25 it's input?

1 A. They can, yes. There is a
2 service that is offered by PDX that is
3 referenced as RX.com. That allows the
4 interconnectivity of data among locations in
5 relative near time.

6 Q. All right. So we have two
7 separate -- I think you referred to them as
8 software. You have PDX and RX.com.

9 Is that fair?

10 A. Just to clarify, RX.com, think
11 of it as a server that is hosted by PDX
12 themselves.

13 Q. Is the interface on RX.com for
14 the user the same as it is with PDX at the
15 store level?

16 A. Correct. There's no separate
17 software. The service of RX.com is built in
18 within the PDX software.

19 Q. If a pharmacist or a tech logs
20 on through PDX within that first 24 hours
21 when it's stored at the local level, can that
22 pharmacist see the patient profile at another
23 Giant Eagle store --

24 A. Yes, they can.

25 Q. -- if they're not using RX.com?

1 A. If they're not using RX.com,
2 no. The RX.com is the inter -- is a --
3 again, is that interconnectivity among all of
4 our locations.

5 Q. All right. By
6 interconnectivity, however, the store level,
7 pharmacist or the tech, has to log on through
8 the web versus logging on at the store level,
9 correct?

10 A. That is not correct. The
11 RX.com service is built in within the
12 dispensing software. There's not a separate
13 portal or a website.

14 Q. I'm not -- when a pharmacist or
15 a tech at the store level is looking at their
16 computer screen, is there a different path
17 for PDX than RX.com?

18 A. There is -- no, there's not.
19 Thinking of it -- think of it as if I'm
20 pulling up a profile for John Smith. The
21 information for John Smith would pull from
22 the RX.com server to show information from
23 other locations.

24 Q. Okay. So let me -- let's see
25 if we can do that within the -- the larger

1 architecture.

2 So you have a -- where is the
3 RX.com server stored?

4 A. To my -- it's a service
5 provided by PDX. So I -- I don't know the
6 exact location of it, but PDX headquarters is
7 in Dallas-Fort Worth area.

8 Q. Is a patient profile
9 information for Giant Eagle stored at -- on a
10 PDX server at any point in time in this
11 process?

12 A. It would be on the RX.com
13 server.

14 Q. And the RX.com server is PDX,
15 correct?

16 A. That is correct.

17 Q. Okay. So when we were tracking
18 the flow of information prior, information's
19 input through PDX, stored at the local level,
20 exported nightly to the data warehouse.

21 Am I saying that accurately?

22 A. That's correct. In addition to
23 the -- in addition to the local -- stored on
24 the local server. In near realtime, that
25 information is also pinged to the RX.com

1 server as well.

2 Q. Okay. So from the local
3 server, the data for -- that's input through
4 PDX has two paths: one to the PDX server and
5 one to Giant Eagle's data warehouse, correct?

6 A. Relatively correct.

7 So the RX.com server would be
8 in near realtime, and the data warehouse
9 would be uploaded nightly after the
10 pharmacy -- after the pharmacy closed.

11 Q. All right. So at the store
12 level when a pharmacist or a tech logs on to
13 PDX, is that through a button or a tab or a
14 link?

15 A. They would launch the software
16 from an icon on the computer -- on the
17 desk -- on the computer desktop. To log in,
18 they would either need their credentials of a
19 username and password, or the software also
20 has biometric capabilities where they can
21 place their finger down on a biometric
22 scanner to log in.

23 Q. Okay. So the process you
24 described through logging on to PDX, that
25 would also log on the user then to RX.com.

1 Am I saying that correctly?

2 A. RX -- just so we can kind of
3 clarify.

4 RX.com isn't a separate
5 software. It's built into the PDX software.
6 So think of it as a inter --
7 interconnectivity of data within the software
8 system.

9 Does that help clarify that?

10 Q. It does, but let me make sure
11 I -- the way I said it, but help me.

12 So I said the process you just
13 described, logging on to PDX, that would also
14 enable the user to access data on RX.com
15 automatically.

16 Did I say that correctly?

17 A. From a generality standpoint,
18 that's correct.

19 Q. Okay. Now, let's kind of --
20 help me walk through some time frames.

21 So the sequence you just
22 described to me, how long has that been in
23 place at Giant Eagle with data flow from PDX
24 to the local server, to both the data
25 warehouse and PDX's servers? How long has

1 that been in place?

2 A. Data warehouse has been in
3 place, to my best recollection, prior to
4 2006.

5 RX.com goes back even farther
6 to approximately 2002, 2003 time frame.

7 Q. Okay. All right. That was
8 helpful.

9 I'm going to switch to, Gina,
10 if I could, to -- I'm going to share the ELMO
11 from right here in front of me.

12 So, Mr. Miller, I've created a
13 chart to try to help both of us see if we can
14 communicate. And you've accurately -- and
15 we're going to try to record it down for our
16 own purposes. And we can change headers or
17 definitions or whatever to help match with
18 Giant Eagle's data collection process.

19 Okay, sir?

20 A. Sure.

21 Q. I'm going to start real easy.
22 This patient profile information underneath
23 1, who collects the data - pharmacist, tech.

24 That patient profile
25 information is on a new patient, hardcopy

1 prescription, is captured or collected at the
2 store level, correct?

3 A. That is correct.

4 Q. Okay. So I'm going to write
5 down just the "pharmacist and/or the tech."
6 Is that right?

7 A. Can we also include intern as
8 well?

9 Q. Sure.

10 And for simplicity today, why
11 don't -- can we refer to store level as
12 pharmacist, tech or intern, unless you tell
13 me something different.

14 Is that fair?

15 A. That's fair.

16 Q. Okay. And that data for the
17 patient profile, which we'll get into some of
18 the specifics in a minute, that data is
19 recorded on the local server, correct?

20 A. That is correct.

21 Q. And then on the -- it's
22 exported to the data warehouse nightly,
23 correct?

24 A. That is correct.

25 Q. Okay. And then what do you

1 refer to -- is it PDX.com -- the server, PDX,
2 or how do you -- what do you --

3 A. We can -- we reference it as
4 RX.com.

5 Q. And to me that's a little
6 confusing because that sounds like a website,
7 but I'm talking about the server.

8 But you're cool with RX.com?

9 A. That's what we refer to it as.
10 That's its proper name. So I understand the
11 confusion of a website, but it's not.

12 Q. It's not. Okay.

13 So -- and RX.com, I'm going to
14 put down NRT for near realtime. Is that
15 accurate?

16 A. That's accurate.

17 Q. Okay. And then the next step
18 is, I'm going to put DW, or data warehouse,
19 correct?

20 A. Are you referencing the data
21 warehouse steps -- on step 2 where it says
22 "nightly"? Is that the same data warehouse?

23 Q. I don't know. I want you to
24 help me with that because we stopped there.
25 So let's build that out a little bit more.

1 Okay?

2 A. So just to clarify, it has
3 "local" and then "DW nightly." Then you
4 started to write "data warehouse" again.

5 Is there -- there's only one
6 data warehouse.

7 Q. Okay. You had mentioned
8 earlier there were two servers, one at
9 headquarters and one at an off-site location
10 that's backed up. Help me understand the
11 difference between those two.

12 A. There -- it's -- one is just a
13 duplication of another in case of a server
14 failure. So same information.

15 Q. All right. Great.

16 So now we hit briefly on
17 archive.

18 Is there any archiving other
19 than the data warehouse or RX.com?

20 A. Sure.

21 The pharmacy archive table is
22 built within RX -- or, I'm sorry, is built
23 within data warehouse.

24 Q. Okay. So when we talk about
25 the data hitting the data warehouse, that's

1 also where the archiving takes place?

2 A. That is correct.

3 Q. Okay. So from a general --

4 very general description, local, data

5 warehouse nightly, RX.com, near realtime,

6 that includes archiving, correct?

7 A. That is correct.

8 Q. Okay. So let's continue across

9 the page. And I'm just going to X out that

10 next column, is data saved to a centralized

11 data location, because we hit it in column C.

12 We've caught column E as well.

13 And then F, just for

14 clarification, the patient profile, hardcopy

15 data, is it stored anywhere else other than

16 RX.com, the data warehouses and the local

17 servers at the store level?

18 A. Hardcopy prescription -- if

19 we're referencing just hardcopy

20 prescriptions, the actual physical hard copy

21 itself would be stored within the pharmacy in

22 files.

23 Q. Okay. In paper files?

24 A. That is correct.

25 Q. Okay.

1 A. In addition to the electronic
2 image there, the hard copies are also
3 maintained.

4 Q. Okay. I'm going to come back
5 to column C, and I'm going to write down
6 "hard copy - store level."

7 Is that correct?

8 A. That is correct.

9 Q. Okay. So I'm just going to put
10 an X on column F, is it maintained anywhere
11 else, because we have local server, data
12 warehouse, RX.com, hardcopy -- hardcopy
13 prescriptions at the store level.

14 Nowhere else, correct?

15 A. That is correct.

16 Q. Okay. All right. Column G,
17 how long is data retained in the data storage
18 location. So let's do each one of those
19 individually. Okay?

20 So we're still on patient
21 profile. How long --

22 A. Okay.

23 Q. -- is that data retained on the
24 local server?

25 A. For at least two years plus the

1 current year.

2 Q. Okay. I'm going to put "at
3 least two years, plus current year."

4 That's for local, right?

5 A. That is correct.

6 Q. Okay. Let's do the data
7 warehouses.

8 How long is the patient profile
9 information stored at the data warehouse
10 level?

11 A. For at least ten years.

12 Q. Okay. And how about RX.com?

13 A. For at least two years.

14 Q. Okay. So DW, you said at least
15 ten years?

16 A. That is correct.

17 Q. And RX.com, at least two years,
18 correct?

19 A. That is correct.

20 Q. Okay. Now, let's go to H.

21 Is data -- data outside --

22 we're talking about the patient profile.

23 How long can the store level
24 review patient profile information through
25 PDX at the local level?

1 A. For at least two years plus the
2 current year.

3 Q. Okay. Should I say local? Is
4 that -- or is that more just through PDX?

5 Let me do it this way.

6 A. It would be --

7 Q. Go ahead.

8 A. No, I'm sorry, go ahead,
9 please. If you had -- if you wanted to ask a
10 different way, go ahead.

11 Q. Let me ask it -- let me make
12 sure we can -- maybe we can break it into two
13 questions.

14 Is the patient profile
15 information stored at the local store level
16 and visible for two years to the pharmacist,
17 tech and intern?

18 A. For at least two years plus the
19 current year.

20 Q. And that's -- okay. That's at
21 local -- and visible to the pharmacist,
22 intern, tech, correct?

23 A. That is correct.

24 Q. Okay. Now, let me stop for a
25 second and go back to a prior answer about

1 the scope of the information saved at the
2 data warehouse or RX.com.

3 Is the scope of the information
4 saved on the data warehouse in RX.com the
5 same?

6 A. No, they would be -- they would
7 be -- they would contain different --
8 potentially they could contain different
9 materials of a prescription.

10 Q. Okay. Now, we know the
11 temporal scope, or the time saved, on data
12 warehouse is longer, at least ten years, than
13 RX.com, which is at least two plus the
14 current year.

15 Did I say that right?

16 A. That would be correct.

17 Q. Okay. So to me, I'm not
18 talking about the temporal scope. I'm
19 referencing the types of information stored
20 at the data warehouse in RX.com.

21 Can you give me a general
22 description?

23 Is there an easy way to do it
24 for us to understand the types of information
25 stored on RX.com versus the type of

1 information stored at the data warehouse?

2 A. We can try -- we can try to
3 walk -- walk through it.

4 The RX.com information would be
5 patient profile information, so patient
6 demographics, information related -- the data
7 related to the filling of a prescription. So
8 the hard copy, the drug, strength, refills,
9 quantities, the prescriber who wrote the
10 prescription.

11 Q. Okay.

12 A. Whereas data warehouse -- data
13 warehouse is going to contain other metadata
14 around that.

15 Q. Okay. So the data warehouse
16 information, that scope is broader than
17 RX.com?

18 A. In the sense of more -- in the
19 sense of "broader" meaning additional data
20 captures, yes.

21 Q. Meaning additional data capture
22 at the data warehouse as compared to RX.com?

23 A. To my best of knowledge, yes,
24 that is correct.

25 Q. Is the data that is captured at

1 RX.com a subset of the data captured at the
2 data warehouse?

3 A. By "subset" do you mean like --
4 like specific data? What do you mean by
5 "subset"?

6 You mean more limited data?

7 Q. No. Subset to me is a piece of
8 a small -- of a larger data pull.

9 And what I mean by that is, is
10 RX.com, the data stored on RX.com, different
11 than the data stored at the data warehouse?

12 A. The data -- the data itself
13 would be the same. So there's nothing to
14 be -- for example, one data field would be
15 different on RX.com than it would be at data
16 warehouse, if that's what you mean.

17 Q. And let me ask just kind of one
18 follow-up question.

19 If -- just use the alphabet.
20 The data stored at the data warehouse is A
21 through Z, as an example. Okay?

22 A. Uh-huh.

23 Q. RX.com, is it A through M,
24 meaning it's a portion of a broader set of
25 data stored on the data warehouse?

1 A. Yes, that would be a correct
2 example.

3 Q. Okay. And I apologize if
4 you've already explained this, but I'm having
5 trouble understanding or thinking of a reason
6 why you would duplicate storing data on
7 RX.com of the larger set that's stored at the
8 data warehouse.

9 What's the reason for that?

10 MR. KOBRIN: Object to form.

11 Beyond the scope.

12 QUESTIONS BY MR. MOUGEY:

13 Q. Go ahead.

14 A. Giant Eagle itself does not own
15 the PDX RX.com server. It's a service that's
16 built into the recordkeeping and dispensing
17 software.

18 Q. Okay. And I get that.

19 But if the data is already
20 stored at the data warehouse and it's a
21 broader set than what's at RX.com, why would
22 PDX simply not interface with the data
23 warehouse and pull directly from the data
24 warehouse? What's the point of having
25 RX.com?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: The service of
3 RX.com is the interconnectivity of
4 information among the stores. Data --
5 the information stored in data
6 warehouse does not have that
7 capability.

8 QUESTIONS BY MR. MOUGEY:

9 Q. All right. And at the store
10 level, through PDX -- well, let's do -- can a
11 pharmacist or a tech or an intern pull or
12 query information from the data warehouses?

13 MR. KOBRIN: Object to form.
14 Beyond the scope.

15 THE WITNESS: No. Pharmacy
16 technicians or interns would not have
17 the capability to query data
18 warehouse. They would be able to --
19 if they needed additional information,
20 they can always make that request
21 through pharmacy information
22 technology team.

23 QUESTIONS BY MR. MOUGEY:

24 Q. Okay. So on the visibility
25 side, the store level has no visibility to

1 the data stored at the data warehouse over
2 ten years unless it's by specific request; is
3 that fair?

4 MR. KOBRIN: Object to form.

5 Beyond the scope.

6 THE WITNESS: Yes, correct.

7 QUESTIONS BY MR. MOUGEY:

8 Q. The pharmacist, the tech, the
9 intern, store level, through PDX, does have
10 visibility into RX.com over the data stored
11 for two years, correct?

12 A. That is correct.

13 Q. Okay. All right. Let's see if
14 we can capture those two.

15 So RX.com visible for two years
16 plus current year, right?

17 A. I would say at least two years
18 plus the current year.

19 Q. Okay. Okay. Now, one step I
20 missed here is -- and I apologize if I
21 already asked you and I just missed it. At
22 the local level, how often is the information
23 purged?

24 A. So the information on the local
25 server is maintained for at least two years

1 plus the current year.

2 Q. Okay.

3 A. And oftentimes the information
4 has remained there longer based on
5 capabilities of purging. But then you get
6 into different time frames based on each
7 location, based on the amount of data that
8 would be stored. So that's why the general
9 answer is at least two years plus the current
10 year.

11 Q. But on an information pull from
12 store 1, store 2, store 3, through PDX, if it
13 wanted to see a patient history, it could --
14 the store would be able to pull that through
15 RX.com?

16 MR. KOBRIN: Object to form.

17 THE WITNESS: Yes. That would
18 be correct.

19 QUESTIONS BY MR. MOUGEY:

20 Q. We've talked about the flow of
21 information kind of downstream from the store
22 level to the RX.com to the data warehouse.
23 Let's talk about maybe it moving upstream, or
24 the other way.

25 Is there data that moves

1 upstream, meaning from the data warehouse or
2 RX.com back to the local level servers?

3 A. There would be. There would be
4 information from RX.com that would flow into
5 another pharmacy.

6 So in the example earlier,
7 store A would fill a prescription. Later,
8 say a couple months later, store B would --
9 that patient would go to store B for that --
10 for another prescription. That information
11 would flow from RX.com into store B. That
12 patient profile and prescription history
13 would flow to store B.

14 Q. And let's make sure we're
15 saying the same thing.

16 I understand that it would
17 flow, meaning that the store level could see
18 the data through PDX and then RX.com, but
19 would that example you just gave, would that
20 data for that patient then be stored at the
21 local level?

22 A. It would be, yes, once it's
23 pulled over. That is correct.

24 Q. All right. Help me to
25 understand that, because that would be --

1 that same -- the example you gave, that same
2 prescription then would be duplicated, or
3 even replicated three times, at the local
4 level at each server and then also RX.com.

5 Am I -- do I have that right?

6 MR. KOBRIN: Object to form.

7 THE WITNESS: The prescription
8 that would have been filled at store B
9 would be at the local server at store
10 B, and then it would be at RX.com.

11 If that patient would go back
12 to store A, the information then would
13 flow to store A. Store A would see
14 the visibility of store B, the
15 prescription that store B filled.

16 QUESTIONS BY MR. MOUGEY:

17 Q. Yes, sir, and I got the
18 visibility part. But as far as the data then
19 being replicated, would that prescription --
20 that patient profile and prescription history
21 for that patient be at store A, store B and
22 RX.com?

23 A. The patient profile itself
24 would be at three different locations at that
25 point, correct.

1 Q. So if I'm at store level and I
2 pull a patient profile who -- a patient
3 that's visited multiple Giant Eagle stores to
4 fill prescriptions, and I'm running queries
5 through PDX, is that data pulled from RX.com
6 or the local server?

7 A. The information would be pulled
8 from RX.com, in which the local servers would
9 feed to RX.com.

10 So if I would have a new
11 patient come in, RX.com would pull the
12 patient profile information to be visible in
13 another location.

14 Q. All right. So visibility,
15 RX.com for at least two years and current
16 year.

17 And the answer would be the
18 same at the local level, correct?

19 A. That is correct. At least two
20 years plus the current year on the local
21 server.

22 Q. Okay. So local and RX.com
23 visibility at the store level for at least
24 two years and current year.

25 Did I have that -- did I say

1 that right?

2 A. Local year -- I'm sorry, local
3 would be two -- at least two years plus the
4 current year.

5 Q. Right.

6 Which is the same as RX.com,
7 correct?

8 A. That is correct.

9 Q. Okay. All right. Let's leave
10 I open for a minute.

11 So let's go back and change our
12 fact pattern just a little bit. We were
13 talking about a new patient, and we were
14 talking about a hardcopy prescription.

15 Would you explain to me the
16 process for an electronic prescription?

17 A. Sure.

18 So who -- so are we talking
19 about an electronic prescription for a new
20 patient?

21 Q. Yes, sir. Thank you.

22 A. Okay. Collecting of the data
23 would look a little bit different as if it
24 was -- if it was a new patient, the -- most
25 of the information would be gathered from the

1 electronic prescription itself, but it could
2 still be collected from a pharmacist, tech or
3 an intern.

4 Q. All right. Is there -- so
5 let's talk about the patient profile for
6 electronic and hard copy.

7 How are the records for an
8 electronic prescription for an existing
9 patient matched with existing profiles?

10 A. An electronic prescription
11 would come in with -- and again, in the
12 header of the electronic prescription it
13 would show patient demographic information.
14 That demographic information would be matched
15 to a patient profile by a pharmacy team
16 member.

17 Q. Is it manual, the matching of
18 the electronic prescription for an existing
19 patient?

20 A. At times, yes. There would be
21 times where electronic prescriptions would be
22 coming -- come in as a refill request. So a
23 doctor would respond electronically to a
24 refill request where that patient demographic
25 information would be already prepopulated.

1 Q. All right. Other than that on
2 the electronic prescription where the patient
3 profile information is auto-populated, are
4 there any other descriptions -- are there any
5 other differences in the process and data
6 retention that we just walked through?

7 A. There would not be, no.

8 Q. Okay. All right. Let me -- we
9 talk about this process through the -- I
10 think you used the words "demographic
11 information." And I want to go down this
12 chart to patient prescription history,
13 patient comments and what other data fields
14 there are. So let's just focus on these one
15 by one.

16 What information was captured,
17 or is captured, manually by the pharmacist,
18 tech, intern, at the store level with a
19 hardcopy prescription?

20 I think you -- I have name,
21 age, address, phone number, date of birth.

22 Are those all correct?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: Those would all
25 be -- those would all be part of the

1 demographic information.

2 QUESTIONS BY MR. MOUGEY:

3 Q. Okay. What other -- what other
4 demographic information under the patient
5 profile would you include that was collected
6 at the store level?

7 A. There would also be insurance
8 information related to the patient.

9 Q. Okay. Anything else?

10 A. In part, in the dispensing
11 software system, there's also patient gender
12 that is captured.

13 Q. Okay. Anything else?

14 A. No. Those would be the
15 required information of collecting for a new
16 prescription.

17 Q. All right. So let's talk about
18 this next line here, patient prescription
19 history.

20 So obviously if there's a
21 history, it's an existing patient.

22 Does that make sense?

23 A. So existing patient has -- we
24 filled prescriptions for before, correct?

25 Q. Yes. Okay.

1 So store level pulls up the,
2 you know, type -- pulls up the patient
3 profile, correct?

4 A. That is correct.

5 Q. At the point of the
6 prescription -- and I'm talking about
7 controlled substance prescriptions. At the
8 point of prescriptions, how does the store
9 level match patient profiles to make sure
10 they have the right patient?

11 A. They would use the patient
12 name, patient date of birth, and at times
13 they would also confirm via address and phone
14 number.

15 So they would use the -- they
16 would use the patient demographics to match
17 to the correct patient.

18 Q. All right. So patient name,
19 date of birth, and at times the phone number,
20 correct?

21 A. And address.

22 Q. Government ID? Any number
23 taken at the -- when the prescription is
24 presented?

25 A. No, there would not be.

1 Q. Okay. So other prescriptions,
2 the prescription history, how does that
3 appear once the -- or does it appear once the
4 profile for that patient is selected?

5 A. The patient -- the patient
6 prescription history would appear within the
7 patient profile. There is a separate --
8 there's a separate tab that says "RX history"
9 on it.

10 Q. And the RX history is -- I'm
11 going to use the words "auto-populated" from
12 the tab, right?

13 A. I'm sorry, what do you mean
14 auto -- I'm not understanding your question.

15 Do you mean -- the tab's there
16 to view the patient prescription history.

17 Q. Okay. So the store level
18 doesn't need to go searching for the
19 prescription history. It's on a tab right in
20 the patient profile?

21 A. That is accurate, yes.

22 Q. Click the tab "prescription
23 history." Auto-populates. They're all right
24 there. Makes sense?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. MOUGEY:

3 Q. Okay. So -- now we haven't
4 nailed done exactly the subset of information
5 that was stored at RX.com of data warehouse.

6 Let's talk about the
7 prescription history.

8 Is the prescription history
9 stored at both RX.com and the data warehouse?

10 A. Yes, that is correct.

11 Q. So for the same periods of time
12 that we just walked through, at least two
13 years and the current year?

14 A. For local, that is correct.

15 Q. Yes, sir.

16 And that's also correct for
17 RX.com, correct?

18 A. That is correct.

19 Q. Okay. So both patient profile
20 and the prescription history are visible at
21 the store level for at least two years and
22 the current year, correct?

23 A. That is correct.

24 Q. All right. So let's see if we
25 can -- under the patient prescription

1 history, I'm going to just -- if I put on a
2 tab in -- I'm sorry, I'm getting all of my
3 acronyms mixed up. PDX?

4 A. That is correct, yes.

5 And if you want to even clarify
6 farther, on a tab within the patient profile.
7 So I'd have to look up the patient first to
8 view that specific patient's profile --

9 Q. Yep.

10 A. -- or RX history.

11 Q. Makes sense. Okay. All right.

12 So I have patient prescription
13 history on a tab in PDX in patient profile.

14 Okay?

15 A. Yes.

16 Q. And are your answers for
17 prescription history the same as far as where
18 the data is recorded, how long visibility,
19 the same across the page for prescription
20 history as it was for patient profile?

21 A. Column -- or column C would be
22 correct.

23 Q. Okay. So I'm just going to put
24 little quotes here, meaning kind of the same
25 as above. I'll just write it down, "same as

1 above." All right?

2 We go across the page.

3 A. Column G would also be correct.

4 Q. Okay.

5 And how about H? I'll get it a
6 little closer for you.

7 A. Thank you. Thank you so much.

8 Q. No problem.

9 We have local and RX.com
10 visible for two years and current year, and I
11 have in paren, at least two years.

12 A. That is accurate.

13 Q. Okay. All right. Now, does
14 PDX also have a patient comment field?

15 A. Do you mean a patient -- like a
16 patient note field?

17 Q. Yes, sir. Notes, comments,
18 whatever you want to call it, yes, sir.

19 A. Yes, as part -- as part of the
20 patient profile, there is a patient note
21 area.

22 Q. Okay. So I'm going to write
23 down "patient note."

24 Now, who has access to include
25 notes in -- so same question as B. Who can

1 put notes into the patient notes field at the
2 store level?

3 A. So the same as above. The
4 pharmacist, technician and interns would all
5 have the ability to enter a patient note.

6 Q. Okay. So I'll write down
7 "pharmacist, tech and intern."

8 Do you know how many characters
9 are available in the patient note field?

10 A. I do not know.

11 Q. All right. Are the answers for
12 the patient note field, as far as storage and
13 visibility, the same as they were for your
14 prior answers for the patient profile and the
15 prescription history?

16 A. For local and RX.com, they
17 would be the same.

18 Q. Okay. Is there any other
19 information that we're missing in the patient
20 profile -- I have number 4 now -- that we
21 haven't hit already?

22 A. There are a few different --
23 other data elements that would be collected
24 in the patient profile. There would be some
25 clinical information if received from the

1 physician electronically, such as patient
2 blood pressure, patient weight. Emergency
3 contact information can also be recorded for
4 patients.

5 Q. Okay.

6 A. There would be -- there would
7 be med synchronization data that could be
8 kept within the patient profile. And what I
9 mean, "med synchronization," that would be
10 taking maintenance medications, so
11 maintenance being prescriptions that are
12 being used on a routine basis to treat a
13 disease state, so that the patient could pick
14 up their refills at the same time every month
15 rather than having to make multiple trips to
16 the pharmacy.

17 Q. Okay. Anything else that comes
18 to mind?

19 A. And then automatic refill -- if
20 authorized by the patient, automatic refill
21 data would be stored within the patient
22 profile as well.

23 Q. Okay. Anything else?

24 A. One additional data field of --
25 would be the patient authorizing non-safety

1 caps versus safety caps. So the type of lid
2 that would be on the prescription vial, that
3 would also be contained within that patient
4 profile.

5 Q. Is that the ones that are the
6 kind of child-preventative caps?

7 A. Exactly. Exactly. The
8 standard for dispensing would be using the
9 childproof caps, but patients can ask and
10 request to have an -- guess like a flip-off
11 cap, like an easy-open cap.

12 Q. All right. Sometimes that --

13 A. Would also be in the patient
14 profile.

15 Q. Sometimes I think those are
16 Peter Mougey-preventative caps, but, yes.
17 Anything else you can think of?

18 A. Nothing comes to mind at this
19 point.

20 Q. Okay. Now, safe to conclude
21 answers as far as retention and visibility on
22 the local and RX.com are the same?

23 A. I'm sorry, did you say -- I had
24 a hard time hearing you.

25 Did you say local and RX.com?

1 Q. Yes, sir.

2 Your responses that you gave as
3 far as how the data is stored, whether it be
4 upstream, downstream, and the retention
5 periods, the same for this -- the additional
6 data in patient profile?

7 A. For local and RX.com, that
8 would be correct.

9 Q. Okay. Where would information
10 like allergies or known medical conditions,
11 anything like that, be? Would that be in the
12 patient profile as well?

13 A. It would be. There -- as part
14 of the patient profile, as I mentioned, the
15 RX history tab, there's a specific tab for
16 allergies of the patient that we would
17 collect from the patient.

18 Q. Okay. Help me if you can --

19 A. And did you -- I'm sorry, you
20 also mentioned about diagnosis or disease
21 states, correct?

22 Q. Right.

23 A. There's also -- there is also
24 an area in the patient profile for disease
25 states and for diagnosis codes.

1 Q. Okay. And there's -- and I
2 think I've seen some screenshots, but there's
3 different tabs for different types of
4 information, correct?

5 A. Relatively speaking, that is
6 correct, yes.

7 Q. Okay. Let me throw one more
8 variable into the question.

9 Existing patient presents a
10 prescription on the two years. If the
11 patient comes in month after month after
12 month for more than two years, is the -- at
13 least two years and the current year, does
14 the data then roll off if the patient is
15 active?

16 A. Do you mean if the patient is
17 actively filling the same prescription or
18 different prescriptions?

19 Q. Let's say different
20 prescriptions.

21 A. The storage would be for at
22 least two years plus the current year.

23 Q. All right. So where I'm going
24 is that -- let's just assume for a minute
25 that a patient is not active for at least two

1 years plus the current year, and then they
2 come back and it's year 4.

3 Would the data, based on the
4 patient profile that we just walked through
5 on rows 1, 2 and 3 and 4, would that then be
6 purged off of the local RX.com and would not
7 be visible at the store level?

8 A. The patient profile with
9 regards to patient -- the patient
10 demographics, the patient notes and some of
11 the other data that would be in the patient
12 profile would remain on the local server. To
13 date, we have not purged patient profiles.

14 The patient history -- the
15 patient prescription history would be on a
16 case-by-case basis if that's -- if
17 information would have been purged in
18 archives off that local server.

19 Q. Okay. So let's stay there for
20 a minute. Let's put a different variable and
21 say that the -- it's longer than at least two
22 years and the current year, and the patient
23 presents a different prescription, meaning
24 one that he hadn't filled or she hadn't
25 filled before.

1 Does the patient profile and
2 prescription history roll off?

3 A. It does not necessarily roll
4 off. It would have to be an active task of
5 what you mentioned, the purging and archiving
6 that information.

7 Q. What do you mean by necessarily
8 it has to be an "active task"? What's an
9 active task mean?

10 A. Meaning somebody from the
11 information technology department would have
12 to go into a specific location and from,
13 using their language, purge that data after
14 two and a half -- or after two years plus the
15 current year. It's not done on a routine
16 basis at this current time.

17 Q. All right. Let me -- let me
18 make sure I'm following you.

19 So when you inserted the
20 language "at least two years" on each of
21 these, when is the last time that Giant Eagle
22 has purged or deleted patient profiles on
23 either the local --

24 A. The last time --

25 Q. Go ahead.

1 A. I was just going to say, I'm
2 not aware of the last -- the last time it was
3 occurred. It would occur either for storage
4 reasons that we'd have to -- there's been
5 cases where high-volume stores have had to
6 turn over, reuse, old prescription numbers
7 just because of the lack of space and the
8 lack of numerical characters, but I don't
9 have a relative time frame of when that
10 occurred.

11 Q. So we went -- is there any way
12 for you to provide information, store by
13 store, how long the lookback was at the store
14 level for patient profiles or prescription
15 history?

16 MR. KOBRIN: Object to form.

17 Beyond the scope.

18 THE WITNESS: To clarify your
19 question, do you mean is there --
20 would there be a way to know when
21 information was, to use the term,
22 purged from that patient profile?

23 QUESTIONS BY MR. MOUGEY:

24 Q. Yes.

25 A. That information might be

1 available, but I'm not relatively sure.

2 Q. So when you're using the word
3 "at least" -- or words "at least two years"
4 at the local RX.com, some stores it may be
5 longer because they're not as busy, for
6 example, than high-volume stores that may
7 need to purge or delete patient information
8 on a more regular basis?

9 A. That's one -- that would be a
10 scenario that would be correct.

11 Q. So there's not a consistent
12 record retention or field retention for
13 RX.com, store by store, other than it's there
14 for at least two years?

15 MR. KOBRIN: Object to form.

16 THE WITNESS: To clarify your
17 question, you mean a local server,
18 correct?

19 QUESTIONS BY MR. MOUGEY:

20 Q. Well, let's do the local server
21 first.

22 There isn't a consistent data
23 retention for patient profile or prescription
24 history other than at least two years,
25 correct?

1 MR. KOBRIN: Object to form.

2 Misrepresents prior testimony.

3 THE WITNESS: The consistent
4 practice is keeping information on the
5 local server for at least two years
6 plus the current year.

7 QUESTIONS BY MR. MOUGEY:

8 Q. Exactly.

9 So some stores may be longer,
10 but there isn't a consistent practice other
11 than at least two years, correct?

12 MR. KOBRIN: Object to form.

13 THE WITNESS: Two years -- at
14 least two years plus the current year.

15 QUESTIONS BY MR. MOUGEY:

16 Q. Yes, two years plus the current
17 year.

18 Some stores may be longer; some
19 stores may not be. Correct?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: That is correct.

22 QUESTIONS BY MR. MOUGEY:

23 Q. Okay. And is that the same
24 answer for RX.com as it is for local?

25 A. I can't -- I can't speak to the

1 processes of PDX actively doing it and
2 removing information from RX.com, so I can't
3 answer that question.

4 Q. Mr. Miller, I believe you
5 testified that to date we have not purged
6 patient profiles.

7 Did I get that right?

8 A. The patient demographic
9 information, if you're referring to that,
10 that is correct. The patient would remain on
11 the local server.

12 Q. Okay. And that's true across
13 all Giant Eagle stores?

14 A. To the best of my knowledge,
15 that is correct.

16 Q. All right. Same question
17 but -- well, let me make sure.

18 When we say "demographic,"
19 we're talking about name, age, address,
20 phone, date of birth, correct?

21 A. That is correct.

22 Q. Okay. Now, for prescription
23 history, we're sticking with the at least two
24 years and the current year, correct?

25 A. Yes, that is correct.

1 MR. MOUGEY: Mr. Kobrin and
2 Mr. Miller, if is this a good time for
3 about a ten-minute a break, that would
4 be great.

5 MR. KOBRIN: You good to take a
6 break, Chris?

7 THE WITNESS: Yeah.

8 MR. KOBRIN: Are you hungry,
9 Chris? Are you okay?

10 THE WITNESS: I was going to
11 say, could we take maybe about a half
12 an hour so I could get some lunch?

13 MR. KOBRIN: Or do you want to
14 do it in like -- they're an hour ahead
15 of us, Chris, is the only thing. But
16 if you're hungry now -- could we do it
17 now, Peter? I don't want to mess you
18 guys up.

19 MR. MOUGEY: I'm okay either
20 way.

21 Mr. Miller, are you at the -- I
22 mean, do you have -- is a half an hour
23 enough? Are you at the office? Do
24 you need to go grab a sandwich or
25 something?

1 THE WITNESS: I'm a two-minute
2 walk from my kitchen, so...

3 MR. MOUGEY: All right. Well,
4 then -- Josh, whatever you -- half an
5 hour is fine, 45 minutes.

6 MR. KOBRIN: Let's go off the
7 record and debate.

8 VIDEOGRAPHER: The time right
9 now is 12:24 p.m. We are off the
10 record.

11 (Off the record at 12:24 p.m.)

12 VIDEOGRAPHER: The time right
13 now is 12:41 p.m. We're back on the
14 record.

15 QUESTIONS BY MR. MOUGEY:

16 Q. Mr. Miller, are you familiar
17 with RapidFill?

18 A. I am, yes.

19 Q. What's RapidFill?

20 A. RapidFill was the computer
21 system that we had previous to our current
22 version of EPS Workflow.

23 Q. Explain in a little more detail
24 what Giant Eagle uses RapidFill internally
25 for.

1 MR. KOBRIN: Object to form.

2 THE WITNESS: RapidFill was
3 used as the dispensing --
4 recordkeeping and dispensing software
5 previous to our current of EPS
6 Workflow. It's the same PDX product.

7 QUESTIONS BY MR. MOUGEY:

8 Q. All right. I'm -- I apologize,
9 but to me we're using PDX, EPS and RapidFill.
10 They're not the same though,
11 correct?

12 A. PDX -- they're all main --
13 they're all owned and designed by PDX.
14 RapidFill is a different -- is a version,
15 Workflow -- the current version is a
16 diversion.

17 So a little bit different
18 with -- unique to how work is processed, but
19 the general recordkeeping fields are, in a
20 sense, the same.

21 Q. All right. Let me go back and
22 try each one of these individually.

23 I thought you and I identified
24 right out of the gates that PDX and EPS were
25 the same -- I think you referred to them as

1 software.

2 A. That is correct.

3 Q. Okay. So RapidFill is a
4 different software than PDX and -- what was
5 it? EPS?

6 A. Not necessarily. EPS RapidFill
7 and EPS Workflow are different versions of a
8 PDX product.

9 Q. So when I've been referring to
10 PDX the last hour, hour and a half, I have
11 not left out a different software package
12 that the -- at the store level, meaning EPS,
13 have I?

14 A. From what we were discussing
15 around the patient demographics, no, there
16 would be no change between RapidFill and
17 Workflow.

18 Q. Okay. So no difference
19 between -- from what we've covered to date,
20 right now, there's been -- PDX, EPS and
21 RapidFill, up to this point where we are
22 right now, no difference?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: That is -- that
25 is accurate insofar as the patient

1 profile.

2 QUESTIONS BY MR. MOUGEY:

3 Q. Same thing with prescription
4 history?

5 A. That is correct.

6 Q. Same answer with patient note?

7 A. That is correct.

8 Q. Okay. So -- and we're going to
9 come back to this, but explain the difference
10 then with RapidFill and PDX. Where do they
11 start to diverge?

12 MR. KOBRIN: Object to form.

13 THE WITNESS: So to clarify the
14 answer, both are PDX products. One is
15 called RapidFill. One is called
16 Workflow.

17 So the differences -- I believe
18 you're trying to -- referencing the
19 differences between RapidFill and
20 Workflow.

21 QUESTIONS BY MR. MOUGEY:

22 Q. Okay. So PDX is more of the
23 umbrella, and below PDX we have Workflow and
24 RapidFill; is that accurate?

25 A. That is correct.

1 Q. Okay. So some stores use
2 RapidFill and some stores use Workflow?

3 MR. KOBRIN: Object to form.

4 THE WITNESS: RapidFill was
5 rolled out around the 2011 to 2013
6 time frame with stores going on at
7 different times. Obviously we had to
8 roll that out.

9 Workflow, the conversion to
10 Workflow, took place around the
11 2015-2016 time frame.

12 QUESTIONS BY MR. MOUGEY:

13 Q. What's the difference between
14 RapidFill and Workflow?

15 MR. KOBRIN: Object to form.

16 THE WITNESS: The way that --
17 the way that work is processed or how
18 a prescription would flow through
19 the -- I hate to use the word "pun" --
20 but the workflow of a prescription
21 would slightly be different between
22 the two programs.

23 QUESTIONS BY MR. MOUGEY:

24 Q. How many stores are using
25 RapidFill and how many stores are using

1 Workflow? And I'm in the 2015, 2020 time
2 frame.

3 A. All -- currently all stores are
4 on the EPS Workflow platform.

5 Q. That's currently.

6 Let's just do, you know,
7 2013 -- let me do it another way.

8 Has there been a migration from
9 RapidFill to Workflow?

10 A. The migration would have been
11 just during the raw period of converting --
12 converting stores on a -- on a period of
13 time, getting all the -- the entire chain
14 over to Workflow, if that's what you mean.

15 Q. So let me just start it the
16 easy way.

17 The migration is from -- I want
18 to make sure I don't have it backwards.

19 Is the migration from RapidFill
20 to Workflow or do I have it backwards?

21 A. It would be from RapidFill to
22 Workflow. You're correct.

23 Q. All right. So when did the
24 migration from RapidFill to Workflow begin?

25 A. Around the 2015 time frame it

1 began, and we finished the chain around the
2 2016 time frame.

3 Q. Okay. So for '15, '16, there
4 were some stores that were operating on
5 RapidFill, some stores that were operating on
6 Workflow, fair?

7 A. During that conversion time,
8 that is correct.

9 Q. Okay. But at post-'16, all
10 stores were on Workflow?

11 A. That is correct.

12 Q. Okay. Store level -- before we
13 move into prescriber, store level, can --
14 with PDX, can pharmacists, techs, interns,
15 see any patient data from pharmacies outside
16 of Giant Eagle?

17 A. The -- the only prescription
18 data that would be visible from outside of
19 Giant Eagle would be either from insurance
20 companies, where that prescription would be
21 flagged by an insurance company for some sort
22 of patient care issue, or controlled -- for
23 controlled substances would be visible via
24 OARRS. I'm sorry, the PDMP in the state of
25 Ohio or in any of the states that we operate

1 in.

2 Q. Okay. So Ohio-specific, what's
3 visible to the -- at the store level is Giant
4 Eagle data, OARRS and potentially TPPs?

5 A. I'm sorry, TPPs?

6 Q. Third-party payer?

7 A. Oh, yes, that is correct.

8 Q. Okay. The patient note field
9 that we discussed earlier, can notes be
10 deleted at the store level?

11 A. Do you mean from that
12 individual patient?

13 Q. Yes.

14 A. They can be deleted by a user
15 at the store level.

16 Q. And do we have a -- can it be
17 deleted by any of the pharmacists, tech,
18 and/or an intern?

19 A. To my best recollection, yes,
20 that is correct.

21 Q. And intern, define what -- you
22 used the word "intern" before.

23 What do you mean when -- when
24 we reference an intern?

25 A. It would be a state-registered

1 individual who is in a active academic
2 program within a school of pharmacy.

3 Q. Okay. We come back to the
4 share from here, from our chart. This next
5 section that's kind of a pinkish color is the
6 prescriber information.

7 And similar to what we did
8 above, we can change -- change categories or
9 headers to fit kind of your understanding,
10 Mr. Miller, or Giant Eagle's system.

11 But let's use the same example
12 as a hardcopy prescription presented, new
13 patient.

14 What information about the
15 prescriber is collected at the store level?

16 A. To kind of -- so kind of going
17 with the prescriber information, we use a
18 external database that is provided from
19 LexisNexis to maintain a -- to maintain
20 prescriber profiles on a central level which
21 can be pulled down to the store.

22 If you're referencing -- from a
23 hardcopy prescription, we'd be looking at the
24 patient's -- or I'm sorry, the prescriber's
25 name, address, phone number, DEA, NPI number

1 and their state license number as well.

2 Q. Okay. Patient presents
3 hardcopy prescription, new patient.

4 How does the store level match
5 the physician on the prescription with PDX
6 and LexisNexis?

7 MR. KOBRIN: Object to form.

8 THE WITNESS: We can use -- you
9 can use the prescriber's name. You
10 can search by DEA registration number.
11 You can also search by NPI number as
12 well to match the correct -- to match
13 the correct prescriber.

14 QUESTIONS BY MR. MOUGEY:

15 Q. All right. Is there -- is that
16 done in an automated system or is it manual
17 at the store level where a specific
18 prescriber profile is selected?

19 A. For referencing the current
20 scenario of a hardcopy prescription, that
21 would be done by a user at the store level.

22 Q. Okay. And would the user at
23 the store level be the same as we were
24 defining store level prior - pharmacist, tech
25 or an intern?

1 A. That is correct.

2 Q. All right. So is it accurate
3 then here, under prescriber-identifying
4 information, that it would be pharmacist,
5 tech or intern with data pulled from
6 LexisNexis?

7 A. The information would be -- for
8 the hardcopy prescription scenario, the
9 information would be searched by the
10 prescriber's name, DEA registration number or
11 NPI, and can pull -- and would pull the
12 patient's -- I'm sorry, the patient -- the
13 prescriber's profile from the central
14 database.

15 Q. And by "central database," are
16 you referring to LexisNexis?

17 A. That is correct.

18 Q. All right. So at the store
19 level, would the pharmacist, tech, intern, be
20 able to search LexisNexis through PDX?

21 A. Yes. The LexisNexis
22 information is provided to us from
23 LexisNexis. To my best recollection, their
24 database is given to us upon roughly every
25 month, so we would pull that information into

1 our central host.

2 Q. I think we're talking --

3 A. Or onto our central server.

4 Q. I think we're talking past each
5 other. Let me -- so at the -- at the store
6 level, through PDX, the data is pulled off of
7 Giant Eagle's internal servers, correct?

8 A. For the information provided by
9 LexisNexis, that is correct.

10 Q. Right.

11 But it was -- it's downloaded
12 from LexisNexis on a monthly basis into Giant
13 Eagle's system, correct?

14 A. Roughly on a monthly basis. It
15 could be more or it could be less. I just
16 know it's roughly around a monthly basis.

17 Q. Is the data that's pulled from
18 LexisNexis stored at the local level or at
19 the data warehouse or both?

20 A. It would be stored at the local
21 level. There would be aspects to the
22 prescriber that would also be stored in data
23 warehouse related to that prescription.

24 Q. Okay. So the data pull from
25 LexisNexis on roughly a monthly basis, that

1 data pull is duplicated and stored on each
2 local Giant Eagle server?

3 A. When I would pull the
4 information from the central database, that
5 prescriber profile would also be stored then
6 on the local server as well.

7 Q. All right. I'm not talking
8 about pulling it and then storing it. I'm
9 talking about the initial -- the monthly pull
10 from LexisNexis, is that export stored at the
11 local servers initially or the data
12 warehouse?

13 A. Separate from the data
14 warehouse. It would be stored on the -- on a
15 central server that Giant Eagle hosts. And
16 then when I would search for the prescriber
17 on the local level, it would pull that
18 information down.

19 Q. Okay. So there's a bank of
20 servers that store the LexisNexis prescriber
21 information, separate from the data warehouse
22 and separate from the local servers?

23 A. It could be on the same server
24 in a different area. I'm not familiar with
25 what server it's actually stored on. It's

1 referred to as the central host.

2 Q. But you don't know if the
3 central host is the same as the data
4 warehouse or different --

5 A. I'm not sure if it's --

6 MR. KOBRIN: Object to form.

7 THE WITNESS: I am not -- I'm
8 not familiar if it's on the same
9 Oracle server or not. It could be on
10 a different server, but it's on the
11 central host.

12 QUESTIONS BY MR. MOUGEY:

13 Q. Okay. But sitting here today,
14 you don't know the initial import of
15 LexisNexis on the prescriber information,
16 whether the central server and the data
17 warehouse are the same?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: That is correct.
20 I'm not sure if the data from
21 LexisNexis is stored within data
22 warehouse or in a separate location on
23 a server.

24 QUESTIONS BY MR. MOUGEY:

25 Q. Okay. Now let's go back up to

1 where a local store level has a hardcopy
2 prescription on a new patient.

3 The information is pulled from
4 the central server; is that fair?

5 A. That is correct.

6 Q. Okay. And the -- with the
7 information pulled from the central server
8 that was exported from LexisNexis, the
9 pharmacist, tech or intern manually select
10 the prescriber; is that correct?

11 A. For the hardcopy prescription,
12 that is correct.

13 Q. All right. Let me see if I can
14 catch that then.

15 So I have pharmacist, tech,
16 intern, select doctor profile from central
17 server populated through data LexisNexis.

18 Is that accurate?

19 A. Can you reference -- instead of
20 doctor profile, can you use prescriber?
21 Because there would be -- there's
22 practitioners or physician assistants as well
23 that can prescribe.

24 Q. Sure. All right.

25 The pharmacist, tech and intern

1 select the prescriber from the central server
2 populated through data from LexisNexis.

3 Is that accurate?

4 A. That's accurate.

5 Q. Okay. Now, when did Giant
6 Eagle begin using LexisNexis to pull data for
7 specific prescribers?

8 A. To my best recollection, it's
9 around the 2012, 2013 time frame.

10 Q. All right. Prior to 2012,
11 2013, who did Giant Eagle use -- let me ask
12 that again.

13 Prior to 2012, 2013, when Giant
14 Eagle began to use LexisNexis, what was Giant
15 Eagle's process to pull prescriber
16 information when a hardcopy prescription was
17 presented?

18 A. Prescriber infor -- prescriber
19 information would be created and maintained
20 at the local pharmacy.

21 Q. And what resources were
22 available to the local pharmacy -- or store
23 level to create a prescriber profile?

24 A. I'm sorry, I don't understand
25 the question.

1 What do you mean by

2 "resources"?

3 Q. Well, I mean, just -- I mean,
4 what did they do? What did the store level
5 do to populate the prescriber info in all the
6 fields in Giant Eagle's database when a new
7 patient hardcopy prescription was presented?

8 A. Stores could use the ability to
9 use the information that would be available
10 on the prescription, such as the prescriber's
11 name, licensure, address, phone number.

12 There's also a searchable DEA
13 database that you can go in to verify
14 licensure information with regards to DEA.
15 And each state maintains a database of
16 licensure information as well.

17 Q. Let's do each one of those
18 independently.

19 Is there a field that the
20 pharmacist would -- the store level would use
21 to identify whether or not it searched a DEA
22 database for specific prescriber information
23 prior to 2012 or 2013?

24 A. There would be a note --
25 there's a prescriber note field that could be

1 used by a pharmacist to document that
2 information.

3 Q. But there's no specific field
4 in Giant Eagle, 2012, 2013 and prior, where
5 at the store level it would identify whether
6 they searched a DEA database?

7 A. Just to clarify, do you mean a
8 specific field that is stated as search DEA
9 database, question mark, and then yes/no? Is
10 that what you mean?

11 Q. I don't -- I'm generally
12 asking. I'm not asking whether you and I
13 come up with the specific name of the field.

14 What I'm asking you is,
15 generally speaking, is there anyplace on
16 Giant Eagle's system that documented whether
17 or not the store level searched a DEA
18 database prior to 2012, 2013, when populating
19 prescriber information?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: A pharmacy -- a
22 pharmacy team member could enter
23 information in the prescriber profile
24 under -- in the notes section.

25

1 QUESTIONS BY MR. MOUGEY:

2 Q. Yep. Right. We've covered
3 that, and I appreciate that answer again, but
4 my question is a little different. I get
5 that they can put it in notes.

6 Is there any specific field
7 documenting where the store level would say,
8 we searched a DEA database when populating
9 the fields necessary for the prescriber
10 profile?

11 MR. KOBRIN: Object to form.

12 Asked and answered.

13 QUESTIONS BY MR. MOUGEY:

14 Q. I think it's relatively simple.
15 It's no, right?

16 A. I -- as I previously stated,
17 in -- other than the prescriber note field
18 within the prescriber profile, there is not a
19 specific field that states DEA profile
20 searched on the DEA database.

21 Q. Yeah, let's not get -- look,
22 we're going to go take lunch in a few
23 minutes. Let's not -- you've said that
24 twice.

25 I'm not asking you for specific

1 language, okay? I didn't ask you if it says,
2 "DEA searched, question mark." That's not
3 what I asked.

4 What I asked was, is there
5 anywhere, with whatever name you want to put
6 on it, other than notes, that confirms that
7 the store level searched a DEA database when
8 populating the fields necessary for a
9 prescriber profile?

10 A. As I previously answered, the
11 prescriber profile has a note field where a
12 pharmacy team member can enter that
13 information.

14 Q. Other than notes, there's no
15 other column you can point to, right, sir?

16 A. A field specifically for
17 searching the DEA database?

18 Other than -- other than
19 entering that into the patient -- or a
20 prescriber note fields, there's not a
21 specific field for that.

22 Q. Okay. Same assumption with the
23 hard copy. Assume for a minute that the
24 prescriber did not exist in Giant Eagle's
25 system. How, then, was information entered

1 regarding the prescriber profile?

2 MR. KOBRIN: Object to form.

3 THE WITNESS: Do you mean

4 previous to LexisNexis or at any time?

5 QUESTIONS BY MR. MOUGEY:

6 Q. Both. Let's do prior to 2012,
7 '13, with LexisNex -- I mean, pre-LexisNexis
8 and post-LexisNexis.

9 A. Sure. To answer the first part
10 of the question, pre-LexisNexis, a pharmacy
11 team member would have a create a prescriber
12 profile.

13 Q. And post-LexisNexis?

14 A. It would be very unusual for a
15 prescriber profile to not exist, but in
16 cases -- there would be cases such as
17 veterinarian names that may have to be
18 created that they would follow the same
19 process as before.

20 Q. What fields is data collected
21 in from LexisNexis on the -- for the
22 prescriber profile?

23 A. Sure.

24 There's a prescriber's name,
25 their address, their phone number, DEA

1 registration number, NPI number, any state
2 credentials that are listed.

3 There is a field for the type
4 of prescriber, so such as internist,
5 podiatrist, dentist.

6 There -- and then any other --
7 I just want -- I'm just trying to run through
8 them all, so I apologize.

9 And then different -- so under
10 addresses would also be different -- if the
11 doctor practices at multiple clinics,
12 different addresses would be in there as
13 well, along with phone numbers and fax
14 numbers.

15 Q. So where I have prescriber
16 specialty under number 7, was that
17 information pulled from LexisNexis post-2012,
18 '13?

19 A. That is correct, that would be
20 supplied by LexisNexis.

21 Q. Okay. And that's automatically
22 populated from LexisNexis in the prescriber
23 profile, correct?

24 A. Yes, that is part of the
25 LexisNexis data.

1 Q. Okay. All right. So I've made
2 a note of that under prescriber specialty,
3 LexisNexis, 2012-2013 until current.

4 All right. For prescriber
5 specialty prior to LexisNexis, 2012-2013,
6 that would be filled out manually at the
7 store level?

8 A. That would be -- that would be
9 correct, under a prescriber profile.

10 Q. Okay. So I've made a note
11 here: Prior to LexisNexis, manually
12 populated at store level.

13 Is that accurate?

14 A. Yes, it would have to be
15 manually populated by a team member -- by a
16 pharmacy team member, that is correct.

17 Q. All right. Number 6,
18 prescriber license suspended, not suspended.

19 Any information pulled by Giant
20 Eagle from LexisNexis, 2012-2013 to the
21 current?

22 A. That is correct. LexisNexis
23 would -- with a physician, nurse
24 practitioner, et cetera, would be
25 suspended -- would be suspended, LexisNexis

1 would provide that information.

2 Q. Okay. Prior to 2012-2013?

3 A. There would be communications
4 from state boards from the -- and the DEA for
5 when a practitioner would be suspended, that
6 we have the ability to update that
7 prescriber's credentials as suspended.

8 Q. All right. You said "we have
9 the ability to update."

10 Does that mean there was
11 somebody specific that was assigned to taking
12 that information that was coming in from the
13 DEA and the state boards that would then
14 populate Giant Eagle's database?

15 A. Specifically --

16 MR. KOBRIN: Object to form.

17 Beyond the scope.

18 THE WITNESS: Specifically one
19 person, I wouldn't say so.

20 Information would be collected
21 from different resources. It could
22 have come from a pharmacy. It could
23 have come from a pharmacy district
24 leader. It could have come from
25 somebody in compliance. And then that

1 information would flow to information
2 technologies, who could update or
3 block a prescriber.

4 QUESTIONS BY MR. MOUGEY:

5 Q. So essentially everybody was
6 responsible for getting that information to
7 IT for the prescriber profile, but no one --
8 no-buck-stops here person you could point to?

9 A. No, it would be multiple people
10 collecting that information.

11 Q. I mean, really -- it's not
12 multiple people. It was pharmacists,
13 interns, techs, compliance. Everybody at
14 Giant Eagle was responsible for keeping their
15 eye to the ground to see the information from
16 the DEA and state boards, and then they would
17 tell the IT department.

18 Is that what you're saying?

19 MR. KOBRIN: Object to form.

20 THE WITNESS: Information could
21 be collected from various different
22 data points to inform IT, if that's
23 what you're asking.

24 QUESTIONS BY MR. MOUGEY:

25 Q. I understand it could be. I

1 understand they have the ability to. I

2 understand they might.

3 What I'm asking you is, is
4 there anything that there's a buck-stops-here
5 person or a department whose job it was to
6 make sure that that information that was
7 available about specific prescribers losing
8 their license, that that was notated on Giant
9 Eagle's database so everyone could see it?

10 MR. KOBRIN: Object to form.

11 Beyond the scope.

12 THE WITNESS: If you're
13 referencing a specific department, it
14 would be the responsibility of the
15 pharmacy department to do so.

16 QUESTIONS BY MR. MOUGEY:

17 Q. Well, I'm not referencing a
18 different department. I'm asking you.

19 What department, who, was
20 charged with the responsibility of
21 determining whether or not a prescriber or
22 anyone who issued prescriptions with opiates
23 had lost their license in making sure that
24 information was on Giant Eagle's database?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: I'm sorry, you
2 referenced -- are you referencing a
3 specific person or a department at
4 this point? Both are mentioned in
5 your question.

6 QUESTIONS BY MR. MOUGEY:

7 Q. I'm asking you, sir. Who was
8 the buck-stops-here person or department
9 responsible for gathering publicly available
10 information or information your office
11 purchased and making sure whether or not the
12 prescriber's licensure information was
13 accurately reported on Giant Eagle's servers?

14 MR. KOBRIN: Object to form.
15 Beyond the scope.

16 THE WITNESS: It was the
17 responsibility of those individuals
18 within the pharmacy department down --
19 and including pharmacists.

20 QUESTIONS BY MR. MOUGEY:

21 Q. So everyone in the entire
22 pharmacy department, everyone within Giant
23 Eagle, was all supposed to be watching for
24 licensure information and reporting it to IT.

25 Is that what you're saying,

1 sir?

2 MR. KOBRIN: Object to form.

3 Beyond the scope.

4 THE WITNESS: To clarify your
5 question, you said "everybody within
6 Giant Eagle."

7 It would just be within --
8 those within the pharmacy department.

9 QUESTIONS BY MR. MOUGEY:

10 Q. Every person. That's what I
11 said, sir. Listen to my question.

12 Everyone in the entire pharmacy
13 department within Giant Eagle was all
14 supposed to be looking for licensure
15 information and reporting it to IT so it
16 could be accurately reflected on the
17 databases, correct?

18 MR. KOBRIN: Object to form.

19 Beyond the scope.

20 THE WITNESS: To properly
21 answer your question, different people
22 may have had different access to
23 information with -- regarding a
24 contact from a state board, an e-mail
25 that would be sent out, potentially

1 information from an insurance company.
2 So there could be multiple people that
3 have -- would receive that information
4 that would pass it along to
5 information technologies.

6 QUESTIONS BY MR. MOUGEY:

7 Q. Right.

8 But I -- the word "could" in
9 your answer, right? So I'm not asking about
10 who could.

11 So, sir, if we go back to your
12 subpoena today that you -- we covered this
13 morning, that you were supposed to educate
14 yourself on collection, correct?

15 You agree with me on
16 collection, right?

17 A. As in -- as in both subject
18 matters testimony on page 3? Is that
19 correct?

20 Q. Yes.

21 A. Yes, I would agree to that.

22 Q. Okay. Who, or what department,
23 at Giant Eagle was responsible for collecting
24 prescriber licensing information and
25 recording it on Giant Eagle's servers?

1 MR. KOBRIN: Object to form.

2 Beyond the scope. The topic is about
3 dispensing data.

4 THE WITNESS: And to -- the --
5 previously answered would be that
6 there are multiple individuals that
7 would be responsible for that now, and
8 including pharmacists at the store
9 level filling a prescription.

10 QUESTIONS BY MR. MOUGEY:

11 Q. All right. I get the pharmacy
12 level, everyone in the pharmacy department.

13 But who are these multiple
14 individuals you're talking about that are
15 responsible for collection?

16 MR. KOBRIN: Object to form.

17 Beyond the scope. Asked and answered.

18 QUESTIONS BY MR. MOUGEY:

19 Q. If you don't know, it's okay
20 just to say you don't know. But telling me
21 multiple people is not responsive to my
22 question.

23 What I'm asking you, sir, is,
24 who collected licensure information
25 specifically regarding whether or not

1 doctors' licenses has been suspended? Who at
2 Giant Eagle -- whose job was it?

3 MR. KOBRIN: Object to form.
4 Beyond the scope. Same objection
5 regarding asked and answered.

6 THE WITNESS: And to state my
7 prior answer, there would be multiple
8 individuals that could collect that
9 information, including pharmacists,
10 pharmacy interns, potentially a
11 technician, loss prevention, while
12 working with state Boards of Pharmacy
13 and the DEA, could find that
14 information out.

15 There could be information
16 flowing from an insurance company that
17 the third-party team might have found
18 answers to.

19 So again, multiple individuals
20 could have collected that information.

21 QUESTIONS BY MR. MOUGEY:

22 Q. That's -- how many people are
23 in the pharmacy department at Giant Eagle
24 through 2000s? Hundreds?

25 MR. KOBRIN: Object to form.

1 Beyond the scope.

2 THE WITNESS: I'm not aware of
3 a specific number.

4 QUESTIONS BY MR. MOUGEY:

5 Q. Sir, I'd like just a simple yes
6 or no.

7 Can you point me to any
8 department that was responsible for
9 collecting information identifying whether or
10 not a doctor had lost his license?

11 MR. KOBRIN: Object to form.

12 Beyond the scope. Asked and answered.

13 THE WITNESS: Other than my
14 previous answer that there are
15 multiple individuals who could collect
16 that information, is there a specific
17 person within Giant Eagle or Giant
18 Eagle pharmacy that was responsible
19 for that? No. It would be a team
20 effort to collect that information.

21 QUESTIONS BY MR. MOUGEY:

22 Q. And that's what -- I didn't ask
23 you for a specific person. I'm simply
24 asking: Can you point me to a department,
25 rather than saying the entire pharmacy

1 operation, that was responsible for capturing
2 whether or not a prescriber had lost their
3 license?

4 MR. KOBRIN: Same objection.

5 I think there might be a little
6 confusion here, Peter, because the
7 pharmacy department is a department
8 within Giant Eagle. Giant Eagle is a
9 large grocery chain.

10 MR. MOUGEY: Josh, I'm not
11 swearing you in.

12 QUESTIONS BY MR. MOUGEY:

13 Q. How many pharmacies are
14 there --

15 MR. MOUGEY: Josh --

16 MR. KOBRIN: You want to keep
17 going round and round, that's fine.
18 I'm just trying to help you.

19 MR. MOUGEY: I do. I want an
20 answer. I appreciate it, but I don't
21 want or need your help.

22 QUESTIONS BY MR. MOUGEY:

23 Q. Mr. Miller, how many -- there's
24 200 pharmacies, correct, sir, give or take,
25 at Giant Eagle through the 2000s, correct?

1 MR. KOBRIN: Object to form.

2 Beyond the scope.

3 THE WITNESS: That's an
4 approximation, yes, that is correct.

5 QUESTIONS BY MR. MOUGEY:

6 Q. And there are hundreds and
7 hundreds of pharmacists employed by Giant
8 Eagle during that time of these 200
9 pharmacies, correct?

10 MR. KOBRIN: Beyond the scope.

11 THE WITNESS: That would be
12 relatively correct.

13 QUESTIONS BY MR. MOUGEY:

14 Q. There are hundreds of
15 technicians that are employed at Giant Eagle
16 at these 200 pharmacies, correct, sir?

17 MR. KOBRIN: Beyond the scope.

18 THE WITNESS: That's relatively
19 correct.

20 QUESTIONS BY MR. MOUGEY:

21 Q. And is it your answer today,
22 sir, that all of these hundreds of
23 pharmacists and all of these hundreds of
24 interns -- I'm sorry, technicians, those are
25 the individuals that were responsible for

1 capturing or collecting information about
2 doctors losing their license and forwarding
3 that to IT so it would be on the database?

4 MR. KOBRIN: Object to form.

5 Beyond the scope. Asked and answered.
6 Misrepresents his prior testimony.

7 THE WITNESS: I believe that
8 would be inaccurate, as they would be
9 part of the individuals that would
10 have collected -- that could have
11 potentially collected that
12 information.

13 QUESTIONS BY MR. MOUGEY:

14 Q. See, sir, there you go again
15 with the "could," the "potential." I didn't
16 ask you potentially. I didn't ask you could.
17 I didn't ask you if you had the ability.

18 I'm asking: What department
19 was responsible for identifying prescribers
20 that had lost their license and forwarding
21 that to IT?

22 MR. KOBRIN: Object to form.

23 Beyond the scope. Asked and answered.

24 THE WITNESS: That would be --

25 MR. KOBRIN: Argumentative.

1 THE WITNESS: To specifically
2 answer your question of what
3 department, that would be the pharmacy
4 department.

5 QUESTIONS BY MR. MOUGEY:

6 Q. How many people are in the
7 pharmacy department?

8 MR. KOBRIN: Beyond the scope.

9 THE WITNESS: That would --
10 that would include corporate team
11 members, and that would include every
12 pharmacy technician, pharmacist,
13 pharmacy intern, within the company.

14 QUESTIONS BY MR. MOUGEY:

15 Q. So what your answer to my
16 question about who was responsible for
17 collecting data, whether or not a prescriber
18 had lost their license, your answer is the
19 entire pharmacy department, consisting of
20 hundreds of people?

21 MR. KOBRIN: Object to form.
22 Beyond the scope. Asked and answered.
23 Misrepresents testimony.

24 THE WITNESS: My -- as I stated
25 in previous answers, there could be

1 multiple individuals where that
2 information might have been presented
3 to.

4 QUESTIONS BY MR. MOUGEY:

5 Q. Sir, I'm entitled to an answer,
6 a clean answer. Not "multiple," not "might."

7 Your testimony today is that
8 the entire pharmacy department, consisting of
9 hundreds of people, was responsible for
10 identifying doctors that had lost their
11 license and reporting that to Giant Eagle's
12 technology team, correct, sir?

13 MR. KOBRIN: Object to form.

14 Asked and answered. Argumentative.

15 Beyond the scope.

16 THE WITNESS: As I stated in my
17 previous answer, there were multiple
18 individuals within pharmacy department
19 where that information may have been
20 presented to collect.

21 QUESTIONS BY MR. MOUGEY:

22 Q. Sir, you're using the word
23 "may" again. And to me, I feel like you're
24 not sure what the answer is.

25 So there were multiple

1 individuals within the pharmacy department
2 where that information may have been
3 presented to collect.

4 Mr. Miller --

5 A. That is an accurate statement,
6 correct.

7 Q. And you can't point to anybody
8 specific or any team specific out of the
9 hundreds of individuals in the pharmacy
10 department that were responsible for
11 collecting that information?

12 MR. KOBRIN: Object to form.

13 Asked and answered. Well beyond the
14 scope.

15 MR. MOUGEY: Oh, for goodness
16 sake.

17 MR. KOBRIN: Argumentative.

18 MR. MOUGEY: The collection of
19 data about prescriber's licenses is
20 exactly what we're here to talk about.

21 MR. KOBRIN: Which one? Which
22 topic? Which topic, Peter? Topic 1?

23 MR. MOUGEY: Whichever one you
24 want to pick. There's the whole two
25 of them. You read them while we're

1 off and make sure --

2 MR. KOBRIN: I'm looking at
3 them right now, and I -- if you're
4 going to engage on this and you want
5 to challenge my objection, which topic
6 are you asking questions about?

7 QUESTIONS BY MR. MOUGEY:

8 Q. Mr. Miller --

9 MR. KOBRIN: I'm sorry?

10 QUESTIONS BY MR. MOUGEY:

11 Q. Mr. Miller --

12 MR. KOBRIN: Peter, which topic
13 are you asking questions about?

14 QUESTIONS BY MR. MOUGEY:

15 Q. Mr. Miller --

16 MR. KOBRIN: Peter, if you're
17 not going to answer my question, I'm
18 going to stop this right now.

19 MR. MOUGEY: Then stop it.

20 MR. KOBRIN: This is getting
21 obscene. You're harassing the
22 witness. You're asking the same thing
23 over and over again.

24 I don't understand what topic
25 this is in. I don't think the witness

1 does.

2 You've gotten an answer. You
3 said -- you're demanding that you
4 deserve a specific answer, and I'd
5 like to know on what topic basis do
6 you deserve a specific answer.

7 QUESTIONS BY MR. MOUGEY:

8 Q. Mr. Miller, is --

9 MR. KOBRIN: Okay.

10 QUESTIONS BY MR. MOUGEY:

11 Q. -- is a doctor licensure
12 information part of the prescriber profile at
13 Giant Eagle?

14 A. Just to -- do you mean the
15 prescriber licensure insofar as their DEA
16 registration or state license number? Is
17 that correct? Is that what you are
18 referencing?

19 Q. And what we've talking about
20 the last ten minutes, about whether or not
21 the doctor's license was suspended. That's
22 specifically what I'm talking about.

23 Do you agree that whether or
24 not the doctor's license was suspended is
25 data collected by Giant Eagle?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: Data collected
3 for -- data collected by Giant Eagle
4 would be the DEA registration number,
5 NPI number and state license
6 credentials as part of the prescriber
7 profile.

8 QUESTIONS BY MR. MOUGEY:

9 Q. And prior to 2012 and prior to
10 2013 where the information was pulled by
11 LexisNexis, what group of individuals was
12 responsible for collecting whether or not a
13 doctor was licensed?

14 MR. KOBRIN: Object to form.
15 Beyond the scope. Asked and answered.
16 The topic doesn't say, tell us
17 who is responsible for collecting
18 metadata related to the dispensing
19 data.

20 This is ridiculous. He's given
21 you an answer.

22 You can answer, if you can,
23 Chris, but I think we've gone around
24 and around on this many times.

25

1 QUESTIONS BY MR. MOUGEY:

2 Q. Can you point me to a specific
3 group of people or department, other than the
4 hundreds of people in the pharmacy
5 department, that are responsible for
6 collecting whether or not a doctor is
7 licensed prior to 2012 or 2013?

8 A. As I stated in previous
9 answers, information can be collected by a
10 multitude of individuals, including
11 pharmacists, interns, loss prevention, people
12 in the compliance department. There could be
13 information passed from insurance companies
14 about a specific provider as well, too. So
15 there would be multiple individuals
16 potentially collecting that information.

17 MR. KOBRIN: I can't hear you,
18 Peter. I don't know if you're talking
19 to us or if you're talking to Chris.

20 QUESTIONS BY MR. MOUGEY:

21 Q. Mr. Miller, your answer
22 encompasses hundreds of people, correct, sir?

23 MR. KOBRIN: Object to form.
24 Beyond the scope.

25 THE WITNESS: For those --

1 for -- to include those who could be
2 exposed to that information, yes, it
3 could be.

4 QUESTIONS BY MR. MOUGEY:

5 Q. I didn't say "could be
6 exposed." I asked you who's -- which
7 departments are responsible for collecting
8 data of whether or not a prescriber was
9 licensed.

10 And your answer to me included
11 pharmacist, interns, loss prevention, people
12 in the compliance department.

13 That is hundreds of people, is
14 it not, sir?

15 MR. KOBRIN: Object to form.

16 Beyond the scope.

17 THE WITNESS: That could be --
18 that could have received that
19 information? Yes, it could be.

20 QUESTIONS BY MR. MOUGEY:

21 Q. Was there a specific field that
22 these hundreds of people would note, or it
23 could be noted, that a doctor had lost his
24 license or was suspended?

25 MR. KOBRIN: Object to form.

1 Asked and answered.

2 THE WITNESS: On the patient --
3 on the prescriber profile, there is a
4 probation form that could be used to
5 limit prescribing information, yes.

6 QUESTIONS BY MR. MOUGEY:

7 Q. Is that prior to 2012? Prior
8 to 2013?

9 A. To my -- to my knowledge, that
10 information has always been present under the
11 prescriber profile.

12 Q. And, sir, when you say -- when
13 you indicated to your knowledge, you
14 recognize you're testifying on behalf of HBC,
15 correct? Or Giant Eagle?

16 MR. KOBRIN: Object to form.

17 THE WITNESS: That is correct,
18 yes.

19 QUESTIONS BY MR. MOUGEY:

20 Q. Okay. So prescriber license is
21 suspended. Is the -- that data is collected,
22 I'm going to put down here, by the pharmacy
23 department, loss prevention, compliance, from
24 various sources.

25 Is that accurate?

1 MR. KOBRIN: Object to form.

2 Misrepresents prior testimony.

3 THE WITNESS: Yes, it could be
4 collected by individuals that are in
5 the pharmacy department. There could
6 be individuals by loss prevention in
7 contact with regulatory boards.

8 Compliance could get updates from
9 regulatory boards as well.

10 Interns may have information.
11 Pharmacists may have information. But
12 interns, pharmacists, technicians, I
13 would classify them being under the
14 pharmacy department.

15 QUESTIONS BY MR. MOUGEY:

16 Q. All right. So I have written
17 down here "collected by pharmacists, loss
18 prevention, compliance, interns, technicians,
19 from various sources."

20 Is that accurate?

21 MR. KOBRIN: Object to form.

22 I just want a standing
23 objection. He's not testifying to
24 your notes, is he, Peter? Is that
25 your position?

1 I just want to clarify. His
2 testimony is his statements only, and
3 his testimony is not your notes. I
4 can hardly read them.

5 So I just want to have that as
6 a standing objection.

7 QUESTIONS BY MR. MOUGEY:

8 Q. Mr. Miller, is it your
9 testimony, sir, what I've indicated here on
10 this chart, that the prescriber license,
11 whether or not it's suspended, is collected
12 by pharmacists, loss prevention, compliance,
13 interns, technicians, from various sources?
14 Did I get that correctly?

15 MR. KOBRIN: As I -- object to
16 form. I'm going to say again, because
17 you added it that time as if to deny
18 the standing objection. You said
19 "here on this chart."

20 He's not testifying to your
21 chart, and he's not testifying to your
22 notes, Peter.

23 I mean, do you want to have
24 that as a standing objection?

25 MR. MOUGEY: You can object as

1 much as you want.

2 MR. KOBRIN: I'll keep
3 objecting then to it, but the concern
4 I have here is that you're going to
5 get frustrated with that objection.

6 If you don't want to have it as
7 a standing objection, I'll keep
8 objecting, but he's not testifying to
9 your notes here on this chart.

10 MR. MOUGEY: No, you can have a
11 standing objection. I just figured
12 you just wanted to keep objecting.

13 MR. KOBRIN: I don't want to
14 interfere any more than I have to,
15 Peter.

16 MR. MOUGEY: Yes, you've made
17 that clear.

18 QUESTIONS BY MR. MOUGEY:

19 Q. Mr. Miller, what I'm asking
20 you, sir, is, did I capture accurately on my
21 notes that whether or not a prescriber's
22 license was suspended is collected by the
23 pharmacists, loss prevention, compliance,
24 interns and technicians from various sources?
25 Is that -- is that accurate, sir?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: I also included
3 others in the pharmacy department in
4 previous answers as well, too,
5 including there could be members of a
6 third-party team that work with
7 insurances that might have had that
8 information, in addition to the
9 pharmacists, interns, technicians,
10 pharmacy district leaders who also are
11 in the pharmacy department could have
12 obtained that information from a
13 regulatory authority as well.

14 QUESTIONS BY MR. MOUGEY:

15 Q. All right. The prescriber
16 profile information, prescriber notes,
17 whether or not the prescriber license is
18 suspended, are your answers from earlier
19 today regarding the retention periods on the
20 local RX.com data warehouses, are they the
21 same as this morning or is there different
22 treatment of the prescriber data?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: The information
25 that would be retained on the local

1 server would be correct.

2 To the time frame that a --
3 that information would be on an RX.com
4 server, I am not familiar with, as the
5 prescriber information is maintained
6 on the local server and by our central
7 host through the LexisNexis.

8 So I'm not aware of what -- of
9 how long information is retained on a
10 PDX server since the prescriber's
11 profiles are maintained elsewhere.

12 And there are certain aspects
13 to a prescriber profile that are
14 retained in data ware -- in data
15 warehouse.

16 To the individual that if a
17 license was suspended or not, I can't
18 answer that question if that was -- if
19 that's retained in the thousands of
20 tables that are in data warehouse.

21 QUESTIONS BY MR. MOUGEY:

22 Q. All right, sir. When I --
23 talking about the prescriber data test -- in
24 your testimony, you said that the prescriber
25 information is maintained on the local server

1 and by our central host.

2 Did I get that right?

3 A. That -- once we started using
4 LexisNexis, that is correct.

5 Q. Is it stored at both?

6 A. Once I would pull information
7 down from the central host, that information
8 would -- that information would remain on the
9 local server as well.

10 Q. Okay. But the entire -- the
11 data pull in its entirety went to the central
12 server, correct, sir?

13 A. That is -- from LexisNexis,
14 that is correct.

15 Q. And, sir, you're not sure
16 whether or not that central server that
17 stored the initial data pull from LexisNexis
18 on the prescriber information is the same as
19 the data warehouse, correct?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: That is correct.

22 QUESTIONS BY MR. MOUGEY:

23 Q. And only as information was
24 pulled at the store level about prescriber
25 data was it then stored at the local level,

1 correct?

2 A. If it was -- once it -- once
3 that information was pulled from the central
4 host, that information would be stored on the
5 local server.

6 Q. Do you know how long -- if a
7 prescriber profile was, say, filled out and
8 populated in 2015, and that prescriber did
9 not write a prescription that was filled at
10 Giant Eagle for three years, would the
11 profile have changed or been updated if a
12 patient presented a hardcopy prescription in
13 2018?

14 A. When -- during the search of
15 that profile, it would -- came back to the
16 central host to pull any updated information.

17 Q. When you said "it" came, it was
18 a automatic part of the system that the
19 prescriber profile would be updated with any
20 new information from LexisNexis?

21 A. That is -- that's correct.

22 Q. How often was the -- were the
23 updates performed?

24 A. I'm sorry, collecting -- or
25 getting addition -- new information from

1 LexisNexis, just to clarify your question?

2 Q. Yes.

3 That was monthly, right?

4 A. That was roughly monthly,
5 correct.

6 Q. When the data was imported from
7 LexisNexis onto the central server, were all
8 of the prescriber profiles automatically
9 updated on a monthly basis?

10 A. Do you mean on the local
11 server?

12 MR. KOBRIN: Object to form.

13 QUESTIONS BY MR. MOUGEY:

14 Q. No, because they didn't go to
15 the local server until the -- until they were
16 pulled up with a specific prescription,
17 correct?

18 A. That is correct.

19 So your -- just to clarify your
20 question, do you mean on the -- on the
21 central server, the central host?

22 Q. Yes, sir. Exactly. So let me
23 ask it again.

24 Would -- as data from
25 LexisNexis was imported to the central server

1 on a monthly basis for prescriber profiles,
2 would all prescriber profiles be updated in
3 Giant Eagle's system?

4 A. Those profiles that would be on
5 the central host would be updated with that
6 information.

7 Q. Wouldn't all of the -- all of
8 the prescriber profiles be on the central
9 server?

10 A. As I previously stated in our
11 prior answer, information would be updated on
12 local servers when that prescriber would have
13 been -- would be researched or repulled up,
14 which would update information from the
15 central server.

16 Q. So the prescriber profiles
17 would only be updated as they were -- let's
18 do it this way.

19 Hardcopy prescription presents
20 on a prescriber that hasn't been pulled in
21 six months. Is that profile only updated as
22 it's pulled from the -- at the store level?

23 MR. KOBRIN: Object to form.

24 THE WITNESS: That is our
25 knowledge, correct.

1 QUESTIONS BY MR. MOUGEY:

2 Q. Was there a step in the process
3 that the store level had to update the
4 prescriber profile after 2012 or 2013, or
5 would it automatically update?

6 A. I'm not aware of an additional
7 step.

8 MR. KOBRIN: Peter, we've been
9 going for about an hour since the last
10 break. If you have a point where you
11 want to break, we should probably
12 break for lunch.

13 MR. MOUGEY: I'm close. Let me
14 just finish this line.

15 MR. KOBRIN: Okay.

16 QUESTIONS BY MR. MOUGEY:

17 Q. If a pharmacist is -- let me
18 do -- at the store level, a prescription is
19 being filled, could anyone collect data on
20 that prescriber across all HBC stores -- or,
21 I'm sorry, Giant Eagle stores?

22 A. To what -- to clarify the
23 question, what information across the stores?

24 Q. Any information.

25 Could a -- at the store level,

1 could prescriber information, for example,
2 how many OxyContin scripts a specific
3 prescriber had written in the last 30 days,
4 could that be collected at the store level?

5 A. There would be reports at the
6 store level that could run the prescriber
7 utilization.

8 Q. Yes, sir.

9 And I didn't mean -- you
10 mean -- when you say "could," could be run,
11 you mean if there was a specific query or
12 question from the store level, that they
13 could ask for a report to be run, correct?

14 A. There is reporting built into
15 the dispensing software that would allow a
16 pharmacy team member to run that report.

17 Q. Right.

18 But as far as a feature on the
19 system, if I wanted -- if I was at the store
20 level and I wanted to search prescriber X,
21 how many oxy prescriptions they had written
22 over the last 30 days, could I do that at the
23 point of fill at the store level?

24 A. For -- at the store level,
25 unique to that store, yes, a pharmacy team

1 member could do that report.

2 Q. Right.

3 So if a -- at the store level,
4 the pharmacist, technician or intern could
5 not search prescriber X for how many
6 OxyContin prescriptions he had over the prior
7 30 days across all the Giant Eagle stores?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: That is correct.

10 MR. MOUGEY: Okay. That's a
11 good stopping place, thank you, for
12 lunch.

13 MR. KOBRIN: All right. How
14 much time?

15 What have we got on the record
16 right now?

17 VIDEOGRAPHER: It's the
18 videographer. Can we go off the
19 record just so I can do the math real
20 quick?

21 MR. KOBRIN: Absolutely.

22 VIDEOGRAPHER: The time right
23 now is 1:41 p.m. We are off the
24 record.

25 (Off the record at 1:41 p.m.)

1 VIDEOGRAPHER: The time right
2 now is 2:29 p.m. We're back on the
3 record.

4 (Miller Exhibit 4 marked for
5 identification.)

6 QUESTIONS BY MR. MOUGEY:

7 Q. Mr. Miller, would you please
8 grab exhibit -- or, I'm sorry, the folder
9 that's marked 1356 out of your box?

10 And Mr. Miller, once you get
11 there, if you'd -- on the bottom right-hand
12 side are what we call Bates numbers. If
13 you'd go to 818.

14 A. I'm sorry. You said 818,
15 correct?

16 Q. I did, yes, sir.

17 A. Roughly what year?

18 MR. KOBRIN: This is in 1356,
19 right?

20 MR. MOUGEY: Yes.

21 QUESTIONS BY MR. MOUGEY:

22 Q. Are you there, Mr. Miller?

23 A. I am, yes, sir.

24 Q. Okay. I believe these look to
25 be what I think are screenshots in patient

1 profiles.

2 Do I have that right?

3 A. Yes, this would be screenshots
4 in the computer dispensing system prior to
5 RapidFill, prior to that 2013 time frame.

6 Q. I thought RapidFill migration
7 was 2015-2016.

8 A. That was Workflow.

9 Q. Okay. Well, explain to me what
10 we're looking at.

11 A. This is -- this is a screenshot
12 of, again, still a PDX product that was the
13 dispensing software up and to the conversion
14 of RapidFill in the 2013 time frame.

15 Q. I know I already asked this,
16 but is the migration from Workflow to
17 RapidFlow {sic} or from RapidFlow to
18 Workflow?

19 A. The conversion was from
20 RapidFill in approximately that 2013 time
21 frame to Workflow in that 2015-2016 time
22 frame.

23 Q. Okay. All right. So this
24 screenshot was consistent on Giant Eagle's
25 system from the early 2000s up to 2013?

1 A. That is correct.

2 Q. Okay. And are you familiar
3 with -- if I use DUR, or drug utilization
4 review reports, what that is?

5 A. I am, yes.

6 Q. Okay. Explain to me what your
7 understanding of a DUR is.

8 A. A drug utilization review would
9 be using different data elements, whether it
10 be OARRS or -- I'm sorry, PDMP, patient
11 profile, the actual prescription itself,
12 performing clinical -- clinical assessment on
13 that therapy.

14 Things to look out for would be
15 overuse or underuse of the medication,
16 dosing, drug-drug interactions, drug-allergy
17 interactions, drug-disease state
18 interactions, therapeutic duplication, you
19 know, early use or even, in a lot of cases,
20 lack of a refill. So a patient may be
21 noncompliant on a blood pressure medication.

22 The drug utilization review
23 would be for the pharmacist to exercise their
24 professional judgment in making sure a
25 therapy is correct for that patient.

1 Q. How did Giant Eagle identify
2 issues that you just walked through pertinent
3 to the DURs?

4 A. Outside of the pharmacist
5 exercising their professional judgment on
6 each prescription, there was certain data
7 elements that the computer software system or
8 the dispensing software would also assist the
9 pharmacist in flagging certain DURs.

10 Q. Okay. Let's cover the first
11 one first, the pharmacist exercising their
12 professional judgment.

13 That, in large part, is the
14 pharmacist manually reviewing, for example,
15 the patient's prescription history, correct?

16 A. That would be one data element
17 of that, correct.

18 Q. Okay. And explain to me what
19 some of the other data elements are.

20 MR. KOBRIN: Object to form.

21 Beyond the scope.

22 THE WITNESS: It would be
23 the -- it would be the actual
24 prescription the patient would
25 present, or in case -- in some cases a

1 refill of a prescription that a
2 patient already had on their profile.

3 It could contain data elements
4 insofar as the Prescription Drug
5 Monitoring Program, or in Ohio it's
6 referred to as OARRS.

7 There would be not -- the
8 patient profile could be reviewed for
9 previous history. Patients -- the
10 patient demographic information could
11 be reviewed insofar as allergy
12 information or past disease states.

13 Those would all be information
14 that the pharmacist could review in
15 exercising a DUR.

16 QUESTIONS BY MR. MOUGEY:

17 Q. Were there specific data fields
18 collected on the DURs identified in the Ohio
19 Administrative Code, for example?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: Are you
22 referencing -- are you referencing the
23 DU -- the Ohio Administrative Code
24 prescription drug review? Is that
25 what you're referencing?

1 QUESTIONS BY MR. MOUGEY:

2 Q. Yes. And if you'd like to look
3 at it, I have a copy for you.

4 A. Yeah, could we pull that up
5 just for reference?

6 (Miller Exhibit 5 marked for
7 identification.)

8 QUESTIONS BY MR. MOUGEY:

9 Q. Sure.
10 Why don't we keep -- Gina,
11 let's keep what's on the screen.

12 But, Mr. Miller, if you'd
13 please pull out of your file Document 163.

14 A. 163, correct?

15 Q. Yes.

16 A. Okay. I have it out, sir.

17 Q. Okay. And so what you've
18 pulled out, you see, sir, is Ohio
19 Administrative Code 4729, correct?

20 A. The 5-20, correct?

21 Q. Yes.

22 A. Yes, sir.

23 Q. Okay. And these are the Ohio
24 Administrative Code DURs identified at this
25 point in time, correct?

1 MR. KOBRIN: Object to form.

2 Beyond the scope.

3 THE WITNESS: I can't specify
4 to this time, as the date in the top
5 left corner has 2/2/21. I assume
6 that's the date this was printed.

7 But I'm seeing an effective
8 date of 3/1/17 at the end, correct?

9 QUESTIONS BY MR. MOUGEY:

10 Q. Yes.

11 So --

12 A. Okay.

13 Q. -- if we compare these DURs,
14 which in large part have been consistent over
15 time, correct, Mr. Miller?

16 MR. KOBRIN: Object to form.

17 Beyond the scope.

18 THE WITNESS: Without seeing
19 previous copies of this Ohio
20 Administrative Code, I would have to
21 agree that relatively, yes, they would
22 be the same over time.

23 QUESTIONS BY MR. MOUGEY:

24 Q. Okay. Thank you.

25 And now if I go to the computer

1 screen that's still on the monitor for -- and
2 that is a screenshot of Giant Eagle's system
3 used at the store level, where would the
4 pharmacist, technician or the intern review,
5 for example, 7, abuse and misuse?

6 MR. KOBRIN: Object to form.

7 THE WITNESS: I mean, it could
8 be multiple -- it could be in multiple
9 different areas. It could
10 be on the -- the first would be
11 looking at the quantity -- the drug in
12 the quantity dispensed.

13 It could be also the patient
14 profile, which is one, two, three,
15 four -- the fifth tab over on the
16 bottom where it says "profiles."
17 Could be looking at previous therapy
18 there for the patient.

19 So you could look at if a
20 prescription was going to be -- was
21 being refilled early. Excuse me.

22 The first tab on the left-hand
23 side is -- where it says "check RX,"
24 that would initiate the drug
25 utilization review from the computer

1 dispensing system as well.

2 And then also as part of the
3 drug utilization review, a pharmacist
4 can -- could -- could review the OARRS
5 database as well, too.

6 QUESTIONS BY MR. MOUGEY:

7 Q. And by reviewing the OARRS
8 database, you're talking about going to a
9 third-party website managed by the State of
10 Ohio pharmacy board. The pharmacists could
11 also go there to review various sorts of
12 information, correct?

13 A. During this time frame, that is
14 correct. Starting in early 2019, the PDMP,
15 or OARRS, was integrated into the dispensing
16 software where a pharmacist would not have to
17 go to a separate website to get that data.

18 Q. That would be Giant Eagle's
19 system would scrape data off of OARRS and
20 incorporate it into its own system?

21 MR. KOBRIN: Object to form.

22 THE WITNESS: In a relatively
23 simple speaking form, that would be
24 correct.

25

1 QUESTIONS BY MR. MOUGEY:

2 Q. Okay. So did Giant Eagle at
3 any point in time retain any third-party
4 vendors to assist it with collecting data and
5 presenting it at the store level to assist
6 with DUR reviews?

7 A. The third-party information
8 was -- was used by PDX from a company that's
9 called Medi-Span for that clinical
10 information with -- regarding database of DUR
11 review.

12 Q. And when did Giant Eagle begin
13 using Medi-Span?

14 A. To clarify, that was -- PDX
15 would use Medi-Span per -- within the
16 dispensing software.

17 Q. Meaning that PDX would
18 interface with Medi-Span and pull data from
19 Medi-Span's databases?

20 A. That is correct.

21 Q. And where -- in what year did
22 PDX begin interfacing with Medi-Span and
23 pulling data into PDX?

24 A. I do not know what specific
25 year.

1 Q. A general time -- how about
2 just broaden it up.

3 When did -- when did Giant
4 Eagle begin using Medi-Span in its DUR
5 reviews?

6 A. To clarify, PDX would use
7 Medi-Span to update the -- to update the
8 computer software, to pull that information
9 into the database --

10 Q. Well, when did the
11 relationship --

12 MR. KOBRIN: Hey, hey, hey,
13 hey, hey.

14 QUESTIONS BY MR. MOUGEY:

15 Q. When did the Medi-Span --

16 MR. KOBRIN: Let the witness
17 finish, Peter.

18 QUESTIONS BY MR. MOUGEY:

19 Q. When did the Medi-Span
20 relationship begin? When did they start
21 using Medi-Span? When did Giant Eagle start
22 using Medi-Span?

23 A. So to clarify my previous -- to
24 clarify as I previous answered, PDX used
25 Medi-Span. Giant Eagle never owned, from my

1 knowledge, owned a relationship directly with
2 Medi-Span. That information would flow
3 through PDX.

4 Q. When did Giant Eagle begin
5 incorporating Medi-Span data into its system?

6 A. Again, as I mentioned
7 previously, PDX pulls the information from
8 Medi-Span. Giant Eagle does not. It's
9 not --

10 Q. I didn't ask you that you, sir.
11 That's not what I asked you, sir. And I'm
12 going to ask for more time unless you start
13 answering the questions I asked.

14 The simple question I asked
15 you, sir, was, when did Medi -- when did
16 Giant Eagle begin to use Medi-Span data into
17 its system?

18 MR. KOBRIN: There's no need to
19 harass the witness, Peter.

20 THE WITNESS: As I stated
21 before, PDX uses the Medi-Span data
22 for their dispensing software.

23 QUESTIONS BY MR. MOUGEY:

24 Q. Yeah, I get that.

25 And when did that data begin

1 being incorporated into Giant Eagle's system?

2 A. I do not know a specific date.

3 Q. You don't even have a general
4 time frame of when Medi-Span data began
5 populating in Giant Eagle's system?

6 A. I can't -- I can't speculate,
7 but I could give you a best guess estimate,
8 if that's what you're asking.

9 MR. KOBRIN: I don't want you
10 to speculate or give a guess. If you
11 don't know, you don't know.

12 QUESTIONS BY MR. MOUGEY:

13 Q. Would you agree with me,
14 Mr. Miller, that the Medi-Span data was
15 incorporated into Giant Eagle's DUR review?

16 A. Yes, I would agree with that
17 statement.

18 Q. And you would agree with me
19 that the data pulled from Medi-Span was
20 collected and included into PDX?

21 A. That is correct.

22 Q. And that the store-level
23 pharmacists, interns, technician, use data
24 from Medi-Span in its DUR analysis at Giant
25 Eagle?

1 A. Along with the professional
2 judgment of the pharmacist, yes, that would
3 be correct.

4 Q. Do you have an understanding of
5 when PDX began incorporating Medi-Span data
6 into the services it provided for Giant
7 Eagle?

8 A. I do not know that specific
9 date.

10 Q. And when you say "specific
11 date," you don't even have a time frame, like
12 a year?

13 A. It would be -- to my best
14 recollection, it was prior to -- it started
15 prior to 2010 at some point. To give you --
16 I can't give you a specific year.

17 Q. Were there specific data fields
18 on Giant Eagle's system that captured
19 information on drug-to-drug interactions?

20 A. So I can provide you an
21 accurate answer, do you mean that -- that
22 flag for specific actions or notes relating
23 to the judgment -- professional judgment of
24 the pharmacist?

25 Q. Either/or.

1 MR. KOBRIN: Object to form.

2 THE WITNESS: Once we -- once
3 we converted to RapidFill, there --
4 the DUR notes were fully captured
5 within the computer system. That
6 would show drug-drug interaction,
7 drug-allergy interaction, therapeutic
8 duplication, et cetera.

9 QUESTIONS BY MR. MOUGEY:

10 Q. All right. When you say "DUR
11 notes," was there a specific DUR notes
12 section?

13 A. There was, yes, a free-form
14 section where a pharmacist could enter their
15 notes regarding professional judgment of that
16 DUR.

17 Q. Were there multiple DUR section
18 notes on different DURs or just one?

19 A. There was just one.

20 Q. So I think we've identified
21 three different notes fields so far. We have
22 the DUR notes, we have the prescriber notes,
23 and we have the patient notes.

24 Have I -- do I have that stated
25 accurately?

1 A. Yes, we -- you know, in the
2 course of -- in the course of this time
3 frame, yes, I believe those are the three
4 notes fields we've identified so far.

5 Q. And if you need to
6 differentiate between any of those notes
7 fields, let me know.

8 But once those notes are
9 entered at the store level, can they be
10 deleted at any point in time in the future?

11 A. Notes regarding a patient
12 profile could be updated or deleted as -- as
13 applicable. Same thing with notes in the
14 patient -- or, I'm sorry, in the prescriber
15 profile could be updated or deleted as
16 needed.

17 Notes related to DURs could not
18 be deleted.

19 Q. And how long were the notes
20 regarding DURs maintained on Giant Eagle's
21 database?

22 MR. KOBRIN: Object to form.

23 THE WITNESS: They were
24 maintained on the local -- they were
25 maintained on the local server for at

1 least two years plus the current year.

2 QUESTIONS BY MR. MOUGEY:

3 Q. All right. Prior to the
4 conversion to RapidFill, was there a notes
5 for DURs?

6 A. There were -- there were notes
7 that could be captured in the patient profile
8 itself. At this current time with the
9 computer system, the DUR screen was printed
10 out and would follow that screen down to --
11 down to the pharmacist, when they would
12 review the prescription at verification step.

13 The notes then related to that
14 DUR could be documented on the DUR printout
15 itself, or they could also be documented on
16 the hard copy of the prescription itself.

17 Q. Prior to the conversion to
18 RapidFill, there was not a field on the
19 database capturing notes regarding DUIs
20 {sic}; is that accurate?

21 MR. KOBRIN: Object to form.

22 THE WITNESS: Other than --
23 other than the DUR screen printouts
24 that would follow the prescription
25 down or the patient profile notes or

1 the hard copy, there wasn't a specific
2 field within the dispensing software
3 up until 2000 -- the 2013 time frame
4 that electronically captured a DUR
5 note.

6 QUESTIONS BY MR. MOUGEY:

7 Q. All right. The DUR Section B
8 printed out. You mean literally it was
9 printed out off at the -- at the store level?

10 A. That is correct.

11 Q. And so if an issue was
12 presented with a DUI {sic}, it was printed
13 out, and then the store-level pharmacist,
14 tech or intern would make notes regarding the
15 issues --

16 A. To --

17 MR. KOBRIN: Object to form.

18 THE WITNESS: To clarify your
19 question, you mean DUR, not DUI?

20 MR. MOUGEY: DUR, yes, thank
21 you.

22 THE WITNESS: Sorry. I
23 thought -- just to clarify.

24 That is correct, they would
25 be -- that DUR review screen would be

1 printed out at the local level and
2 retained at the local level.

3 QUESTIONS BY MR. MOUGEY:

4 Q. So once it was printed out and
5 retained, where do you -- retained where?

6 A. It would be filed in -- filed
7 along with the hard copy of the prescription.

8 Q. All right. Where?

9 A. In the -- in the pharmacy.

10 Q. Where?

11 A. At the local store.

12 Q. Right.

13 Where would they --

14 A. At the local store.

15 Q. In what? Would they -- in a
16 notebook? In a manila folder? In a storage
17 cabinet? Where were they kept?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: Well, they were
20 kept -- at first, until you get to
21 a -- they get filed in piles of a
22 hundred, in a batch of a hundred, in
23 numerical order. And then once
24 that -- once the current batch of a
25 hundred is filled, so once you are at

1 zero to 99, you file that in a -- in
2 a -- what's referenced as a California
3 folder, so a manila folder. They get
4 referenced by date and by prescription
5 numbers, and then they're kept in a
6 drawer in a pharmacy.

7 QUESTIONS BY MR. MOUGEY:

8 Q. Okay. If you wanted to go find
9 a DUR printout on patient John Smith in the
10 paper files, how would you find it?

11 MR. KOBRIN: Object to form.
12 Beyond the scope.

13 THE WITNESS: You would
14 reference the prescription number it
15 was tied to and then go pull that
16 hardcopy prescription with the DUR
17 printout.

18 QUESTIONS BY MR. MOUGEY:

19 Q. Where was the -- and I
20 apologize. I thought you said they were kept
21 from -- in numerical order 1 to 100.

22 A. The bounds of prescriptions
23 are, that's correct.

24 Q. And where is the link between
25 the 1 through 100? In batches of a hundred,

1 how do you identify where a specific
2 prescription number is?

3 MR. KOBRIN: Object to form.
4 Beyond the scope.

5 THE WITNESS: The prescription
6 numbers are, to my best knowledge,
7 seven digits in length. The full --
8 the starting number of 600000 would
9 start, and then 600099 would be the
10 last one, and they would be bundled
11 together.

12 So the outside of the manila
13 folder would reference the starting
14 prescription number in that -- in that
15 batch and then the last prescription
16 number in that batch.

17 QUESTIONS BY MR. MOUGEY:

18 Q. Okay. So when you say they're
19 kept in 1 to 100, that means the number in
20 those California files are the same as the
21 prescription number?

22 A. The -- in a sense, the first
23 four numbers would all be the -- would all be
24 the same, and then the last three numbers
25 would be different in that batch, meaning

1 1 -- meaning 00 through 99.

2 Q. Okay. You explain to me in
3 your own words how you find -- if I wanted to
4 find John Smith's DUR as a patient from a
5 prior issue that arose during the analysis of
6 whether or not to fill a prescription, how do
7 I find that specific DUR?

8 MR. KOBRIN: Object to form.
9 Beyond the scope.

10 THE WITNESS: And to clarify
11 your question, you mean prior to the
12 2013 time frame, correct?

13 QUESTIONS BY MR. MOUGEY:

14 Q. We're talking about the
15 printed-out DURs right now. So prior to
16 2013, how do I find John Smith's DUR?

17 A. I would go into John Smith's
18 profile, look at the prescription number, and
19 I would pull that -- I would manually pull
20 that hardcopy prescription with the DUR note
21 to it.

22 Q. So the DUR prescriptions -- I'm
23 sorry, DUR printed-out copy are kept by
24 prescription number?

25 A. It would be attached to that

1 prescription, correct.

2 Q. If the DURs are not kept by
3 prescription number, how am I going to find
4 John Smith's printed-out DUR?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: The DUR notes
7 are -- in a sense are bound to the
8 hardcopy prescription for that
9 patient.

10 QUESTIONS BY MR. MOUGEY:

11 Q. I get it. I understand.

12 How do I find that specific
13 prescription and that specific DUR?

14 MR. KOBRIN: Object to form.

15 Beyond the scope. Asked and answered.

16 THE WITNESS: I would access --
17 I would access the folder in which
18 those prescriptions are kept, and the
19 DUR notes would be along with the
20 hardcopy prescription.

21 QUESTIONS BY MR. MOUGEY:

22 Q. And is the -- so the folders
23 are organized by prescription number?

24 A. That is correct.

25 Q. So when you said sequentially

1 one to a hundred, that is the same -- that
2 series and the prescription numbers is a
3 bridge between the 1 through 100?

4 MR. KOBRIN: Object to form.

5 THE WITNESS: So thinking of
6 prescription number as being seven
7 digits in length, the first four --
8 the first four digits for that bundle
9 would all be the same. The last three
10 digits, from 000 to 099, would
11 correspond to that individual folder.

12 QUESTIONS BY MR. MOUGEY:

13 Q. If I wanted to review the DURs
14 for a specific prescriber, is that possible?

15 MR. KOBRIN: Object to form.

16 Beyond the scope.

17 THE WITNESS: To clarify,
18 during this -- during the time frame
19 that we've previously been discussing?

20 QUESTIONS BY MR. MOUGEY:

21 Q. Yes. The printout version, the
22 same one we've been talking about. The
23 California folders with the sequential
24 numbers.

25 How do you -- how do I pull

1 DURS for specific prescribers out of the
2 printout version?

3 A. Other than accessing the
4 printout version for prescriptions written by
5 that provider, that's no report to show DURS
6 tied to a prescriber.

7 Q. Yes, sir.

8 And how would I go find those
9 at the local level in a Giant Eagle pharmacy?
10 How would I find the printed-out versions for
11 specific prescribers?

12 MR. KOBRIN: Object to form.

13 Beyond the scope.

14 THE WITNESS: I could run a
15 report by prescriber utilization which
16 would have prescription numbers that I
17 could go manually pull those
18 prescriptions written by a certain
19 prescriber, if needed.

20 QUESTIONS BY MR. MOUGEY:

21 Q. Okay. So post-2013, were there
22 specific fields that addressed the DURS in
23 the document that I have in front of you,
24 which is exhibit -- I'm sorry -- 163 that
25 I --

1 GINA VELDMAN: Peter, that has
2 been marked as Exhibit 4 and 5.

3 MR. MOUGEY: Okay. Gina, is
4 1356, the folder 1356, is that 4?

5 GINA VELDMAN: Yes.

6 MR. MOUGEY: And 163 is 5?

7 GINA VELDMAN: Correct.

8 MR. MOUGEY: Okay. Thank you.

9 QUESTIONS BY MR. MOUGEY:

10 Q. Okay. So post-2013, RapidFill,
11 were there specific fields addressing the
12 utilization in DURs in Exhibit Number 5?

13 MR. KOBRIN: Object to form.

14 Do you understand which one
15 he's looking at as Exhibit 5, Chris?

16 THE WITNESS: We're referencing
17 4729 5-20, correct?

18 QUESTIONS BY MR. MOUGEY:

19 Q. Yes, sir.

20 So in Exhibit 5, which is
21 administrative code 4729, were there specific
22 fields addressing DURs in RapidFill? I'm
23 sorry, in Workflow?

24 A. No, you're fine.

25 Referencing each nine of these

1 aspects, correct?

2 Q. Yes.

3 A. There were some -- there were
4 some DUR fields directly related to each one,
5 and some of them would be the professional
6 judgment of a pharmacist to review.

7 Q. All right. Tell me which DUR
8 fields were used to avoid or resolve
9 potential problems highlighted in each one of
10 these nine.

11 A. Sure. There was a -- I'm
12 sorry, do you mean the system flag -- the
13 computer system flagging it or do you mean
14 the resolution insofar as in a note field?

15 Q. Both.

16 A. The computer software would
17 look under at underutilization or
18 overutilization and would recognize
19 therapeutic duplications of drugs. It would
20 look at drug and disease state
21 contraindications, drug-drug interactions.
22 It would look at high dose or underdose, so
23 incorrect drug dose. It would check drug
24 allergy information. It would look at
25 duration of therapy. Abuse/misuse could be

1 determined insofar as high dose. It could
2 be -- it could be util -- the abuse/misuse
3 could be determined by a multitude of the
4 previous DURs, in addition to early refills.

5 And that's where a pharmacist
6 would exercise their professional judgment.
7 There's not a specific flag that I am aware
8 of in the computer system that says
9 abuse/misuse in a DUR screen.

10 Q. Your testimony, sir, was the
11 computer software would look at prospective
12 drug utilization reviews, and it would
13 recognize, and you gave me a laundry list of
14 things it would recognize.

15 What I'm asking you, sir, is,
16 how would those -- how would that information
17 populate in Giant Eagle's system?

18 A. Under each -- during the drug
19 utilization review screen, the list -- the
20 DURs would be listed on one side of the
21 screen by type.

22 Q. There you go.

23 So the DURs would have a list
24 on the screen under the DUR tab; is that
25 right?

1 A. Yes. That would be -- it
2 wouldn't necessarily say DUR tab, but the DUR
3 screen.

4 Q. DUR screen.

5 And would the lists on the DUR
6 screen, was it similar to the 1 through 9 on
7 Exhibit 5?

8 A. Yes, it was -- it was similar.

9 Q. And similar meaning each one,
10 number 1, overutilization, underutilization,
11 2, therapy duplication, those would be
12 checked if there was an issue on the DUR
13 review?

14 MR. KOBRIN: Object to form.

15 THE WITNESS: Regarding that
16 there was a specific -- a specific
17 alert that said food/nutritional
18 supplement drug interaction or, as I
19 previously mentioned, abuse or misuse,
20 I don't know -- I don't recall then
21 there being specific fields for those
22 two, but these tools would flag in
23 addition to the professional judgment
24 of the pharmacist.

25

1 QUESTIONS BY MR. MOUGEY:

2 Q. And once the pharmacist looked
3 at the flags, was there an additional field
4 indicating that they had been resolved?

5 A. There was a -- there was a
6 free-form note field that the pharmacist can
7 enter their notes, yes.

8 Q. And what was the criteria for a
9 box or a field being checked for each of the
10 DURs?

11 MR. KOBRIN: Object to form.

12 THE WITNESS: DURs that were
13 flagged of the severe or critical
14 nature relating to the Medi-Span
15 criteria would require a pharmacist to
16 enter DUR notes.

17 QUESTIONS BY MR. MOUGEY:

18 Q. So, for example, which one of
19 these DUR fields do you believe, if any,
20 would a opiate cocktail be identified under?

21 MR. KOBRIN: Hold on. Object
22 to form. Beyond the scope. Seeks
23 expert opinion evidence.

24 QUESTIONS BY MR. MOUGEY:

25 Q. Go ahead, Mr. Miller.

1 A. Without understanding --
2 without understanding how the Medi-Span data
3 works, I can't answer that question.

4 Q. That makes two of us.

5 It's kind of important to have
6 that Medi-Span information when you figure
7 out what the formulas are and how these
8 fields are populated, correct, sir?

9 MR. KOBRIN: Object to form.

10 Beyond the scope.

11 THE WITNESS: I can't -- I
12 can't speculate. I can't speculate
13 that answer.

14 QUESTIONS BY MR. MOUGEY:

15 Q. So cocktails. You understand
16 if I said opiate cocktail, what that is?

17 A. I do.

18 Q. And what is your understanding
19 of what an opiate cocktail is?

20 A. To my -- to my recollection,
21 it's an opioid -- a benzodiazepine in a --
22 some form of a muscle relaxant.

23 Q. And how did the Giant Eagle
24 system flag a DUR for an opiate cocktail at
25 any point in time?

1 MR. KOBRIN: Object to form.

2 Beyond the scope.

3 THE WITNESS: A -- while
4 exercising professional judgment, a
5 pharmacist has the ability to review a
6 patient profile.

7 QUESTIONS BY MR. MOUGEY:

8 Q. So other than manually
9 reviewing a patient profile, was there
10 anywhere in HBC -- I'm sorry, Giant Eagle's
11 system that identified or highlighted an
12 opiate cocktail?

13 MR. KOBRIN: Object to form.
14 Beyond the scope.

15 THE WITNESS: I can't speculate
16 in certain time terms that it would
17 flag as a therapeutic duplication, but
18 regarding a specific flag of a drug
19 cocktail, I'm not aware of such a
20 flag, other than the -- for the
21 pharmacist exercising their
22 professional judgment reviewing the
23 patient profile.

24 QUESTIONS BY MR. MOUGEY:

25 Q. Other than manually reviewing

1 the patient profile for drug cocktails, are
2 you aware of any field that would collect and
3 highlight at the store level a drug cocktail?

4 An opiate cocktail, I'm sorry.

5 MR. KOBRIN: Object to form.

6 Beyond the scope.

7 THE WITNESS: The data -- the
8 data in the OARRS -- in the OARRS
9 database would show multiple
10 controlled substances filled for an
11 individual patient.

12 QUESTIONS BY MR. MOUGEY:

13 Q. Again, that's a manual review
14 by the pharmacist, correct, sir?

15 MR. KOBRIN: Object to form.

16 Beyond the scope.

17 THE WITNESS: Reviewing --
18 reviewing an OARRS profile would be a
19 manual review by a pharmacist.

20 QUESTIONS BY MR. MOUGEY:

21 Q. Other than a manual review, did
22 Giant Eagle's system flag for opiate
23 cocktails?

24 MR. KOBRIN: Object to form.

25 Beyond the scope.

1 THE WITNESS: As I -- as I
2 previously answered, a pharmacist
3 exercising their professional judgment
4 in review of a patient profile.

5 QUESTIONS BY MR. MOUGEY:

6 Q. So other than the review of the
7 patient profile or OARRS, which are both
8 manual reviews, is there any data field that
9 collected and highlighted opiate cocktails?

10 MR. KOBRIN: Object to form.
11 Beyond the scope.

12 THE WITNESS: As I previously
13 answered, other -- other than a
14 pharmacist conducting use of their
15 professional judgment of review of a
16 patient profile and reviewing the
17 PDMP.

18 QUESTIONS BY MR. MOUGEY:

19 Q. No, there's no specific field
20 collecting data on opiate cocktails in Giant
21 Eagle's system. Correct, sir?

22 MR. KOBRIN: Object to form.
23 Beyond the scope.

24 THE WITNESS: As I previously
25 stated, other than -- other than a

1 pharmacist reviewing the profile,
2 exercising their professional
3 judgment, and exercising their
4 professional judgment in reviewing a
5 PDMP profile, there's no specific
6 field.

7 QUESTIONS BY MR. MOUGEY:

8 Q. There's no specific field
9 highlighting an opiate cocktail on Giant
10 Eagle's system, other than the manual
11 reviews, correct, sir?

12 MR. KOBRIN: Object to form.
13 Beyond the scope. Asked and answered.

14 THE WITNESS: As I previously
15 stated, other than a pharmacist
16 exercising their professional judgment
17 in reviewing the patient profile, a
18 pharmacist exercising their
19 professional judgment in reviewing the
20 PDMP profile of the patient, there's
21 no specific field listing a drug
22 cocktail.

23 QUESTIONS BY MR. MOUGEY:

24 Q. Is there a specific field on
25 Giant Eagle's system identifying

1 prescriptions for multiple opiates, other
2 than a manual review?

3 MR. KOBRIN: Object to form.
4 Beyond the scope.

5 THE WITNESS: Based on the
6 Medi-Span data and the review of the
7 patient profile, multiple opioids
8 would appear as a therapeutic
9 duplication in the DUR.

10 QUESTIONS BY MR. MOUGEY:

11 Q. Was there a specific field
12 highlighting prescriptions for multiple
13 opiates at the same time for one patient?

14 MR. KOBRIN: Object to form.
15 Beyond the scope. Asked and answered.

16 THE WITNESS: During the drug
17 utilization review process, multiple
18 opioids would flag as a therapeutic
19 duplication.

20 QUESTIONS BY MR. MOUGEY:

21 Q. I just want to make sure we're
22 saying the same thing, because what I'm
23 asking you, sir, is not during the DUR review
24 process, which to me is a manual review.

25 What I'm asking you is, is

1 there a specific field that captures multiple
2 opiate prescriptions to the same patient at
3 the same time?

4 MR. KOBRIN: Object to form.

5 THE WITNESS: Again, to
6 clarify, multiple opioids, in addition
7 to a manual review, would be flagged
8 by the -- by using the Medi-Span as
9 therapeutic duplication as a DUR -- as
10 a drug utilization review.

11 QUESTIONS BY MR. MOUGEY:

12 Q. Yes, sir, I understand that
13 Medi-Span and PDX collected data and put that
14 into a DUR report, but are multiple -- are
15 multiple opiate prescriptions for the same
16 patient, at the same time, is that
17 specifically flagged in Giant Eagle's system?

18 MR. KOBRIN: Object to form.

19 Beyond the scope. Asked and answered.

20 I'm a little confused now, too,
21 Peter. And I know that my
22 understanding might not be as
23 important as yours and the witness'.

24 But I think he's answered this
25 pretty clearly. I'll let him take

1 another shot at it.

2 If you're talking to me, Peter,
3 you're muted.

4 MR. MOUGEY: No, I'm not.

5 Go ahead, Mr. Miller.

6 THE WITNESS: As I have
7 previous stated, in addition to the
8 manual review of the patient profile
9 with the pharmacist exercising their
10 professional judgment, and in addition
11 to a manual review of a pharmacist
12 utilizing OARRS profile information,
13 multiple opioids would appear as a
14 therapeutic duplication using the
15 Medi-Span data analytics that would
16 appear during the drug utilization
17 review process.

18 QUESTIONS BY MR. MOUGEY:

19 Q. And during that process, is
20 there a specific field that's flagged for the
21 duplication?

22 MR. KOBRIN: Object to form.

23 Beyond the scope.

24 THE WITNESS: As I have
25 previously answered, the specific

1 field would be therapeutic

2 duplication, as flagged by the

3 Medi-Span analytical data.

4 QUESTIONS BY MR. MOUGEY:

5 Q. Mr. Miller, where would I find

6 a list of the specific fields that were

7 captured identifying red flags at Giant

8 Eagle?

9 A. I'm sorry, can you reask your
10 question or clarify? I'm not understanding
11 what you mean by "a list."

12 Q. Well, are you familiar with the
13 terms "red flags" in the context of opiate
14 prescriptions?

15 A. I am.

16 Q. Is that a term that's used at
17 Giant Eagle, meaning red flags?

18 MR. KOBRIN: Object to form.

19 THE WITNESS: I would say that
20 the term would -- I would say the term
21 would be used outside of Giant Eagle
22 as well.

23 QUESTIONS BY MR. MOUGEY:

24 Q. Oh, yeah, no, I'm not
25 suggesting that the term "red flags" is just

1 specific and only used at Giant Eagle.

2 What I'm asking you is, sir, is
3 the term "red flags" used at Giant Eagle in
4 the context of opiate prescriptions?

5 A. In context of just opioids?

6 No. In the context of controlled substances
7 and even -- and even noncontrolled
8 substances? Yes.

9 Q. And where would I be able to
10 identify a list of the different red flags in
11 the context of controlled substance
12 prescriptions on Giant Eagle's system?

13 MR. KOBRIN: Beyond the scope.

14 Objection. Beyond the scope.

15 THE WITNESS: Mr. Mougey, to
16 clarify your question, do you mean
17 within the dispensing system?

18 QUESTIONS BY MR. MOUGEY:

19 Q. Within the dispensing system.

20 A. There are free-form notes that
21 pharmacists can enter exercising their
22 professional judgment regarding red flags,
23 which can be documented in notes related to
24 fill the prescription, image notes,
25 documentation on a hard copy, documentation

1 in the patient profile, and documentation in
2 the prescriber profile if needed. In
3 addition to any of the DUR notes that we
4 previously discussed.

5 Q. All right. Mr. Miller, if
6 you'd open, please, folder marked 1310.

7 (Miller Exhibit 6 marked for
8 identification.)

9 MR. KOBRIN: Will this be
10 marked as an exhibit?

11 MR. MOUGEY: Yes.

12 MR. KOBRIN: 6?

13 MR. MOUGEY: 6.

14 MR. KOBRIN: All right.

15 QUESTIONS BY MR. MOUGEY:

16 Q. Do you recognize this document,
17 Mr. Miller?

18 A. May I have just a second to
19 review it, please?

20 Q. Sure.

21 A. Yes, I'm vaguely familiar with
22 this document.

23 Q. All right. Sir, if you'd
24 please turn to the -- about six or seven
25 pages in. It's Bates number 806.

1 A. Okay. I'm with you.

2 Q. Sir, it's titled the
3 "Controlled Substance Dispensing Guideline."

4 Do you see that?

5 A. I do, yes.

6 Q. And the -- underneath the
7 purpose of this document is to "Provide
8 guidelines for the proper dispensing of
9 controlled substances that support the
10 corresponding responsibility mandate placed
11 upon pharmacists to exercise due diligence in
12 the decision to fill or not to fill a
13 controlled substance prescription."

14 Do you see that, sir?

15 A. I do.

16 Q. And, sir, if you'd turn to the
17 next page, Bates number 807.

18 About three-quarters of the way
19 down the page, titled "Appropriateness of
20 Controlled Substance Prescriptions, open
21 paren, Red Flags, close paren," do you see
22 that, sir?

23 A. I do.

24 Q. And on Bates number 807 begins
25 a list of ten red flags at Giant Eagle,

1 correct, sir?

2 MR. KOBRIN: Object to form.

3 THE WITNESS: In the paragraph
4 above, in the DEA-written opinion,
5 these were my best -- in my best
6 knowledge, red flags that were within
7 that opinion.

8 QUESTIONS BY MR. MOUGEY:

9 Q. Yes, sir, thank you.

10 And that Giant Eagle
11 incorporated into its controlled substance
12 dispensing guidelines as of 2013, correct,
13 sir?

14 MR. KOBRIN: Objection. Beyond
15 the scope.

16 THE WITNESS: That is correct.

17 QUESTIONS BY MR. MOUGEY:

18 Q. So I'd like to walk through
19 these list of ten, sir.

20 Number 1, prescriptions written
21 together for oxy, hydro, plus benzos, plus a
22 muscle relaxer.

23 At any point in time, was there
24 a field collected -- field collecting
25 combination of those drugs at Giant -- on

1 Giant Eagle's system?

2 MR. KOBRIN: Object to form.

3 Asked and answered.

4 THE WITNESS: In addition to a
5 pharmacist exercising a professional
6 judgment of reviewing a patient
7 profile, a PDMP profile, and the
8 ability to document in various note
9 fields.

10 QUESTIONS BY MR. MOUGEY:

11 Q. So the answer to my question is
12 no, sir, correct?

13 MR. KOBRIN: Object to form.

14 THE WITNESS: I'm sorry, could
15 you repeat your question, sir?

16 QUESTIONS BY MR. MOUGEY:

17 Q. The answer to my question is,
18 no, sir, correct? That there's not specific
19 fields for these three drugs written in
20 combination together on the Bates number 807,
21 correct, sir?

22 MR. KOBRIN: Object to form.

23 Peter, do you mean a specific
24 field for someone to make a note in or
25 for someone to see a pop-up?

1 We're talking about fields in
2 all these different contexts, and I
3 can't even keep track of what you're
4 asking, particularly when you're
5 saying you want a specific field.

6 QUESTIONS BY MR. MOUGEY:

7 Q. Do you know what a field in a
8 database is, Mr. Miller?

9 A. It could be -- it could be --
10 it could be a note field. It could be a
11 checkbox. It could be -- there's multiple --
12 there could be multiple fields within, you
13 know, a computer software program.

14 Q. Do you understand what a
15 database is?

16 A. I do.

17 Q. Do you think a database and a
18 software program are the same thing?

19 A. I do not.

20 Q. Okay. So do you understand
21 that a specific field delineating a fact is a
22 useful way to track important information?

23 MR. KOBRIN: Object to form.

24 Beyond the scope.

25 THE WITNESS: I can't speculate

1 what would be useful. Pharmacists
2 have the ability to exercise their
3 professional judgment.

4 QUESTIONS BY MR. MOUGEY:

5 Q. Okay. So outside of the notes
6 field, you can't point us to anything
7 specific tracking the combination of those
8 three drugs on Bates number 807 under
9 number 1 of the red flag list, correct?

10 MR. KOBRIN: Object to form.

11 THE WITNESS: Outside of a
12 pharmacist exercising their
13 professional judgment, reviewing data
14 that would be available in the OARRS
15 or the PDMP database, in addition to
16 the pharmacist being able to document
17 those -- information on various note
18 fields, if you're asking if there's a
19 specific field that is marked within
20 the computer system for combination
21 therapy, there's -- outside of the
22 fields that I previously mentioned and
23 the databases previously mentioned,
24 there's no specific field that is
25 marked as "combination therapy."

1 QUESTIONS BY MR. MOUGEY:

2 Q. What does number 2, lack of
3 individualization of dosing, mean to you,
4 Mr. Miller?

5 A. It means that a prescriber, in
6 their course of action, writes the same
7 prescription for every patient.

8 Q. Is there any field on Giant
9 Eagle's system that would assist the -- at
10 the store level a search for a prescriber
11 writing the same prescription for every
12 patient?

13 A. There's a report that users at
14 the local store level can run regarding
15 prescription utilization by prescribers.

16 Q. Do they have the ability to run
17 it at the store level, or do they have to ask
18 someone else to run the report?

19 MR. KOBRIN: Object to form.

20 THE WITNESS: They would be
21 able to run -- they would be able to
22 run that report at the store level for
23 information contained on the local
24 server.

25

1 QUESTIONS BY MR. MOUGEY:

2 Q. And in order to answer a
3 potential red flag under number 2, lack of
4 individualization of dosing, they would have
5 to run another report in addition to
6 exercising their professional judgment, in
7 addition to looking at the OARRS database,
8 and in addition to looking at any third-party
9 vendor data pull. Correct, sir?

10 MR. KOBRIN: Object to form.
11 Beyond the scope.

12 THE WITNESS: So to clarify
13 your question, pharmacists utilizing
14 OARRS cannot run a report based on a
15 prescriber. They only have the
16 ability to run information based on a
17 patient.

18 QUESTIONS BY MR. MOUGEY:

19 Q. Outside of the -- at the store
20 level, manually reviewing various reports,
21 there is not a field on Giant Eagle's system
22 flagging a prescriber writing the same
23 prescription, like OxyContin, for every
24 patient, correct, sir?

25 MR. KOBRIN: Objection. Beyond

1 the scope.

2 THE WITNESS: Outside of a
3 pharmacist exercising their
4 professional judgment, being
5 experienced with other prescriptions
6 that are filled within the pharmacy,
7 reviewing -- reviewing other patients'
8 prescriptions, being able to run a
9 report on prescriber utilization, if
10 you're asking if the system flags for
11 lack of individual dosing, the system
12 does not flag based on -- based on an
13 individual dosing.

14 QUESTIONS BY MR. MOUGEY:

15 Q. Thank you.

16 That's exactly what I'm asking,
17 sir, is, outside of those manual reviews and
18 running reports, is there a system that
19 flags.

20 And so the same question for
21 number 3, multiple prescriptions for the
22 strongest formulations of hydro -- and I
23 never can pronounce the next one. You help
24 me out?

25 A. Alprazolam.

1 Q. Yep.

2 Is there any field at Giant
3 Eagle that specifically flags for the
4 strongest formulizations of hydrocodone and
5 alprazolam?

6 MR. KOBRIN: Objection. Beyond
7 the scope.

8 THE WITNESS: Pharmacists have
9 the ability to perform, using their
10 professional judgment, a review a
11 patient profiles. They have the
12 review of any DUR information that
13 would flag regarding drug-drug
14 interactions or therapeutic
15 duplication, along with the review of
16 the PDMP or OARRS database, in
17 addition to reviewing any previous
18 notes that would be attached to a
19 patient profile or a prescriber
20 profile.

21 QUESTIONS BY MR. MOUGEY:

22 Q. That's not what I asked.

23 What I asked you, sir, is there
24 any field at Giant Eagle that specifically
25 flags for the red flag number 3 on the bottom

1 of 807? Yes or no, Mr. Miller?

2 MR. KOBRIN: Object to form.

3 Beyond the scope. Asked and answered.

4 THE WITNESS: As I previously
5 stated, outside of a pharmacist
6 exercising their professional judgment
7 in reviewing of a patient profile,
8 which includes previous therapy,
9 pharmacists exercising their
10 professional judgment in reviewing a
11 patient's PDMP or OARRS profile,
12 looking at previous documentation with
13 previous DUR reviews or current DUR,
14 and documentation of notes, if you're
15 asking if there's a specific field
16 that flags in the computer system for
17 a strongest formulations of
18 hydrocodone and alprazolam, there is
19 not.

20 QUESTIONS BY MR. MOUGEY:

21 Q. Do you have that answer written
22 on like a yellow sticky note or anything on
23 your computer that you're reading over and
24 over again?

25 MR. KOBRIN: Object to form.

1 Argumentative.

2 QUESTIONS BY MR. MOUGEY:

3 Q. Do you have it on a yellow
4 sticky note or written in front of you that
5 you're just reading the same answer over and
6 over again?

7 A. I do not.

8 Q. Do you have any trouble saying,
9 no, there's just no specific field, instead
10 of reading me a laundry list of manual
11 searches and reviews that the pharmacist has
12 to review?

13 MR. KOBRIN: Stop. Don't
14 answer that.

15 Peter -- Peter, Peter, Peter --
16 {Crosstalk.}

17 QUESTIONS BY MR. MOUGEY:

18 Q. -- the same answer over and
19 over again?

20 MR. KOBRIN: Peter, that's a --
21 don't answer that. You're harassing
22 the witness. This is inappropriate.

23 He's not giving you the answer
24 you want, you can figure out a way to
25 ask it a different way. But this is

1 totally inappropriate. It's
2 harassing. We're going to stop the
3 deposition.

4 If you want to have your
5 remaining 30 minutes, you can take
6 them, but don't use them to harass the
7 witness.

8 MR. MOUGEY: What's totally
9 inappropriate is the fact that this
10 witness has clearly been fed an answer
11 to read over and over again that's
12 not --

13 MR. KOBRIN: Absolutely not.
14 I'm offended by that premise. He's
15 not read anything over and over again.
16 You're asking the same questions over
17 and over again, and that's your
18 problem, Peter.

19 Now, that's your challenge to
20 deal with. And I'm not going to
21 interfere anymore, but don't harass
22 the witness --

23 MR. MOUGEY: His answers are
24 nonresponsive to my questions.

25 MR. KOBRIN: They're absolutely

1 responsive. He's --

2 MR. MOUGEY: I'm not asking --

3 QUESTIONS BY MR. MOUGEY:

4 Q. Mr. Miller, let's make sure
5 we're on the same page.

6 I'm not asking for any manual
7 reviews, and I don't want a laundry list of
8 manual reviews run by the pharmacist. Listen
9 exactly to my question, sir.

10 Is there a data field that
11 highlights whether or not a request for an
12 opiate prescription being filled or refilled
13 is early?

14 MR. KOBRIN: Object to form.

15 Objection. Beyond the scope.

16 QUESTIONS BY MR. MOUGEY:

17 Q. Is there a flag that highlights
18 if an opiate prescription is being asked to
19 be refilled early; yes or no?

20 A. There would be a flag -- there
21 would be -- there would be a flag during the
22 drug utilization review as an early refill.

23 In addition, if the patient was
24 using a third-party insurance, the insurance
25 company would also flag that prescription as

1 early to be refilled.

2 In addition to a pharmacist
3 exercising their professional judgment based
4 on looking at previous refill dates.

5 Q. Yes, sir. And that's manual,
6 correct?

7 A. I'm sorry, the pharmacist
8 exercising their professional judgment?

9 Q. Looking through the
10 prescription history. Correct?

11 A. With a pharmacist exercising
12 their professional judgment by reviewing
13 OARRS data in a patient profile, looking at
14 previous refill dates, yes, that would be
15 manual.

16 Q. Sir, where are the -- where
17 could I see or find a screenshot of the DUR
18 reviews of what's being flagged and what's
19 not?

20 A. I'm sorry, I don't understand
21 your question.

22 Q. What part do you not
23 understand?

24 You got the DUR part, right?

25 A. I do understand the DUR part.

1 Q. You got the DUR review part,
2 right, Mr. Miller?

3 A. I'm asking about the -- the
4 screenshot of the DUR process. I'm not sure
5 what you're asking for.

6 Q. Do you know what a screenshot
7 is?

8 A. I do.

9 Q. Do you remember earlier
10 mentioning that there was a DUR screen?

11 A. I do.

12 Q. Okay. So where can I find a
13 screenshot of the DUR screen?

14 A. I mean, as -- you could request
15 the screenshot from PDX as part of their
16 software.

17 Q. Do you know how to do a
18 screenshot right on your -- on one of the
19 storefront computers of the DUR screen?

20 MR. KOBRIN: Object to form.

21 Beyond the scope.

22 THE WITNESS: Doing a
23 screenshot of a DUR would require
24 divulging protected health
25 information.

1 QUESTIONS BY MR. MOUGEY:

2 Q. Do you understand -- you
3 familiar with the term "redact" information?
4 You can redact information off of a document?

5 A. I am aware of redacted
6 information.

7 Q. Yeah. Okay.
8 So it's -- do you think it's
9 possible to take a screenshot of the DUR
10 screen at Giant Eagle?

11 MR. KOBRIN: Object to form.
12 Beyond the scope.

13 Are you seeking additional
14 discovery from the witness?

15 QUESTIONS BY MR. MOUGEY:

16 Q. Go ahead, Mr. Miller.

17 A. Is it possible to provide a
18 redacted screenshot of a DUR screen? It is
19 possible.

20 Q. So as we -- number 5 of the red
21 flags on 808, is there a specific field at
22 Giant Eagle capturing further-than-expected
23 distances of the patient and/or medical
24 provider from the pharmacy?

25 MR. KOBRIN: Object to form.

1 The objection is beyond the scope.

2 THE WITNESS: We capture the
3 address of the patient and also the
4 address of the provider.

5 QUESTIONS BY MR. MOUGEY:

6 Q. And in order to calculate the
7 distance between the provider and the
8 patient, you have to do what, Mr. Miller?
9 Manually calculate the distance, right?

10 MR. KOBRIN: Object to form.

11 THE WITNESS: The pharmacist
12 would be exercising their professional
13 judgment by looking at information in
14 both the prescriber profile and the
15 patient profile.

16 QUESTIONS BY MR. MOUGEY:

17 Q. And exercising that
18 professional judgment to determine whether or
19 not further-than-expected distances of the
20 patient and the medical provider would
21 require a manual calculation, correct?

22 MR. KOBRIN: Object to form.

23 Beyond the scope.

24 THE WITNESS: Determine --
25 determining whether a

1 farther-than-expected distance would
2 have to rely on pharmacists exercising
3 their professional judgment.

4 QUESTIONS BY MR. MOUGEY:

5 Q. And that professional judgment,
6 in order to arrive at that number, would be a
7 manual calculation, right, sir?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: The pharmacist --
10 utilizing their professional judgment
11 by reviewing the patient profile and
12 medical provider would require a
13 pharmacist to manually calculate the
14 distance.

15 QUESTIONS BY MR. MOUGEY:

16 Q. Yes, sir. But what I'm asking
17 you is, is there a field that would collect
18 or capture the distance, based on a formula,
19 between the patient and the medical provider?

20 MR. KOBRIN: Object to form.

21 That's not what you're asking.

22 It's what you're asking now, Peter.

23 Beyond the scope.

24 QUESTIONS BY MR. MOUGEY:

25 Q. Go ahead, Mr. Miller.

1 MR. MOUGEY: Josh, I really
2 don't need anything else -- any color
3 commentary.

4 MR. KOBRIN: I'm sure you
5 don't. I'm sure you don't. You do
6 great.

7 QUESTIONS BY MR. MOUGEY:

8 Q. Go ahead, Mr. Miller.

9 A. I'm sorry, Mr. Mougey, could
10 you reask the question, please?

11 Q. Yes, for the fourth time.

12 Is there a field that would
13 collect or capture the distance between a
14 patient and a provider on Giant Eagle's
15 system?

16 A. With a pharmacist exercising
17 their professional judgment by looking at the
18 patient profile and the medical provider
19 profile, a pharmacist could manually
20 calculate that distance. And they would have
21 the ability to document it in a variety of
22 note fields.

23 Q. There's no field that
24 specifically calculates the distance between
25 a patient and a provider for the use of the

1 pharmacist in their review, correct, sir?

2 A. Outside of the
3 aforementioned -- or the previous mentioned
4 fields that I discussed about a pharmacist
5 exercising their professional judgment by
6 reviewing the patient profile, the medical
7 provider field to calculate that distance,
8 and documenting -- and potentially
9 documenting that in a notes fields, image
10 note on the hard copy or in a patient
11 profile, there's no specific field within the
12 dispensing software that calculates the
13 distance.

14 Q. Number 8 red flag. Is there
15 any red flag on Giant Eagle's system wherein
16 it could be a notation that patients were
17 arriving in groups?

18 MR. KOBRIN: Object to form.
19 Objection. Beyond the scope.

20 THE WITNESS: Pharmacists,
21 while utilizing their professional
22 judgment while in the process of
23 filling prescriptions for that day,
24 would exercise their professional
25 judgment to determine that.

1 QUESTIONS BY MR. MOUGEY:

2 Q. Is there a specific field,
3 Mr. Miller, that the pharmacist can use when
4 exercising their professional judgment, where
5 he or she could note that a patient arrived
6 in groups to have a controlled substance
7 prescription filled?

8 MR. KOBRIN: Object to form.

9 Objection. Beyond the scope.

10 We're using "fields" for two
11 different things, Peter. It seems
12 that fields either means some kind of
13 a red flag that pops up -- I'm going
14 to put this on the record. It's very
15 confusing -- some kind of red flag
16 that pops up or something that the
17 pharmacist is to fill in. And it's
18 switching back and forth. And I think
19 that's causing a lot of the confusion
20 and communication problems between you
21 and the witness.

22 Go ahead.

23 MR. MOUGEY: I'm not having any
24 communication -- I'm having an answer
25 problem with the question that I

1 asked.

2 QUESTIONS BY MR. MOUGEY:

3 Q. Mr. Miller, I'll repeat the
4 question again after Mr. Kobrin's speaking
5 objection.

6 Is there a specific field that
7 the pharmacist can use when exercising their
8 professional judgment, where he or she could
9 note that a patient arrived in groups to have
10 a controlled substance prescription filled?

11 MR. KOBRIN: Same objection.

12 THE WITNESS: While -- while
13 observing constant practice within the
14 pharmacy and a pharmacist exercising
15 their professional judgment,
16 pharmacists would be able to document
17 that practice in several note fields,
18 including fields on the prescription,
19 in image note, on the hard copy, and
20 in patient profiles.

21 QUESTIONS BY MR. MOUGEY:

22 Q. The answer to my question is
23 no. Correct, Mr. Miller?

24 MR. KOBRIN: Object to form.

25 Beyond the scope, and asked and

1 answered.

2 THE WITNESS: Outside of a
3 pharmacist exercising a professional
4 judgment in being able to document in
5 various note fields, including fields
6 for the prescription and image note on
7 the hard copy, prescriber profiles and
8 in individual patient profiles,
9 there's no specific field that
10 would -- in the computer system that
11 would flag for patients arriving in
12 groups.

13 And, gentlemen, I know we only
14 have roughly maybe about a half an
15 hour left, but I do need about a
16 five-minute restroom break, if
17 possible.

18 MR. MOUGEY: Of course. Go
19 ahead, Mr. Miller, we'll take a break
20 right here.

21 THE WITNESS: Thank you so
22 much.

23 VIDEOGRAPHER: The time right
24 now is 3:36 p.m. We are off the
25 record.

1 (Off the record at 3:36 p.m.)

2 VIDEOGRAPHER: The time right
3 now is 5:53. We're back on the
4 record.

5 QUESTIONS BY MR. MOUGEY:

6 Q. Mr. Miller, what all kind of
7 information do you keep in the notes fields
8 that -- over at Giant Eagle?

9 A. Do you mean specifically or
10 just in general what could be kept in notes
11 fields?

12 Q. Just what kind of information
13 is kept in the notes fields? What's
14 collected at Giant Eagle in the notes fields?

15 A. There could be a lot of
16 different aspects that could be collected in
17 the note fields.

18 If we think about breaking them
19 down in the different note fields, as we
20 previously discussed, there are DUR notes
21 that are related to the drug utilization
22 review process. Patient profile notes are
23 generalized notes regarding that patient.
24 There could be things in that patient profile
25 note that relate to the billing of

1 prescriptions, to, you know, free-form
2 allergies that -- a patient may have a dye
3 allergy that may not always -- that may not
4 flag because it's an ingredient, so there
5 could be some allergy information there.

6 There could be preferences
7 of -- of -- you know, regarding allergies to
8 whether -- you know, kind of looking at the
9 dye allergies of the color of the medication
10 that a patient may have as well.

11 Prescriber notes has different
12 information as well, too, so information such
13 as -- you know, for example, doctor sends
14 over a prescription for amoxicillin capsules,
15 and he gives the okay for substitute the
16 tablets. That note could be placed in the
17 prescriber profile.

18 Then there's image notes that
19 could be for clarifications on a
20 prescription. There could be notes on the
21 prescription related to therapy.

22 There are also notes fields
23 that are -- this fill notes and fills for --
24 for all fills of the prescription could be
25 relating to -- anything with regarding

1 therapy to billing to corresponding
2 responsibility.

3 There's -- the notes fields are
4 used for a multitude of reasons.

5 Q. And I believe that in response
6 to a number of questions about red flags
7 regarding patients, those are -- responses
8 are kept in the note fields, correct?

9 A. That would be correct.

10 Q. In response to DURs regarding
11 patients, some of the analysis you've pointed
12 at the pharmacy level has been -- you've
13 pointed to the notes fields, correct?

14 A. They would be captured in the
15 DUR note field.

16 Q. Right.

17 And the -- any red flags
18 regarding prescribers, you've responded by
19 pointing to notes put in the note fields,
20 correct?

21 A. That is correct.

22 Q. Any prescriber concerns
23 regarding DURs, you've pointed to notes put
24 in the note fields, correct?

25 A. Regarding -- I'm sorry, did you

1 say prescribers regarding the DUR?

2 Q. Yes, sir.

3 A. They could be documented in the
4 note fields, correct.

5 Q. How about refusals to fill?
6 Are refusals to fill kept in the note fields?

7 A. They could be in the note
8 fields. There's also a deactivation. If you
9 would refuse to fill a prescription, there's
10 a deactive -- let me rephrase that.

11 If the prescription makes it --
12 scanned into the computer system, there
13 are -- there's the deactivate function to
14 deactivate a prescription. And within that
15 deactivate function, there are radio buttons
16 to choose whether it's the pharmacist
17 deactivating it, a patient taking the
18 prescription back, a prescriber deactivating
19 it.

20 And also within that function,
21 there is also a free-form note field for the
22 pharmacist to enter additional information.

23 Q. So we've now identified -- I
24 think that's a fourth different notes field,
25 correct?

1 A. I believe it's maybe the fifth
2 notes field.

3 Q. Maybe the fifth.

4 So the notes fields at Giant
5 Eagle are very important with the pharmacist
6 exercising their professional judgment,
7 correct, sir?

8 MR. KOBRIN: Object to form.

9 Beyond the scope.

10 QUESTIONS BY MR. MOUGEY:

11 Q. Go ahead, Mr. Miller.

12 A. I would say note fields are a
13 way for a pharmacist to document their
14 professional judgment.

15 Q. And it's a way for a
16 pharmacist, when exercising their
17 professional judgment, to see what other
18 pharmacists' in the Giant Eagle organization
19 thoughts were on that patient. Correct, sir?

20 A. I'm sorry, I don't understand
21 your question.

22 Q. Well, it's not just one
23 pharmacist putting notes in the note fields.
24 It's the entire Giant Eagle organization
25 putting notes in the note fields, correct?

1 MR. KOBRIN: Object to form.

2 Beyond the scope.

3 THE WITNESS: Just to clarify
4 your question, do you mean on an
5 individual prescription, on a patient,
6 on a prescriber? I just want to --
7 just so I can answer your question
8 better, sir.

9 QUESTIONS BY MR. MOUGEY:

10 Q. Yeah, over time, sir. Over
11 time, that there are a number of people all
12 across Giant Eagle's organization,
13 pharmacists, techs, interns, that can put
14 notes in the note field, correct?

15 A. In specific note fields related
16 to specific patients' -- specific
17 prescriptions and specific providers, that is
18 correct.

19 Q. And one pharmacist's note in a
20 note field could potentially be very helpful
21 to a different pharmacist in Giant Eagle's
22 organization that is filling another
23 prescription at a later time, correct?

24 MR. KOBRIN: Object to form.

25 Objection is beyond the scope.

1 THE WITNESS: I can't speculate
2 if it would be helpful or not. I
3 think that would be under the
4 professional judgment of those
5 pharmacists.

6 QUESTIONS BY MR. MOUGEY:

7 Q. Well, that's why the notes
8 section would be there, right? So what one
9 pharmacist writes down in a note can be used
10 at a later point in time, correct?

11 MR. KOBRIN: Object to form.
12 Beyond the scope.

13 THE WITNESS: It could. It
14 would also be up to that second
15 pharmacist to exercise his or her
16 professional judgment as well.

17 QUESTIONS BY MR. MOUGEY:

18 Q. Right.
19 In reviewing the notes from --
20 and impressions of the pharmacist that filled
21 the previous description {sic}, correct?

22 MR. KOBRIN: Object to form.
23 Beyond the scope. Misrepresents prior
24 testimony.

25 THE WITNESS: As I previously

1 stated, it could -- it's possible that
2 previous notes could help a pharmacist
3 assist in their professional judgment,
4 but that second pharmacist would also
5 be exercising their professional
6 judgment regarding that prescription.

7 QUESTIONS BY MR. MOUGEY:

8 Q. Are there data tables that
9 collect information for specific DUR that are
10 downloaded and can be organized by patient?

11 MR. KOBRIN: Object to form.
12 Objection as beyond the scope.

13 THE WITNESS: Do you mean on
14 the local server? In data warehouse?
15 I'm just -- just to kind of clarify
16 your question, please.

17 QUESTIONS BY MR. MOUGEY:

18 Q. Giant Eagle. Doesn't matter
19 where they are.

20 If a DUR that had been
21 flagged -- is that information stored in any
22 table in Giant Eagle's organization?

23 A. That information is available
24 on the --

25 MR. KOBRIN: Same objection.

1 THE WITNESS: That information
2 is available on the local server for a
3 pharmacist to generate a report
4 regarding DUR reviews for a specific
5 patient.

6 QUESTIONS BY MR. MOUGEY:

7 Q. And how long do you believe
8 that that information is stored on a table
9 for that specific patient?

10 A. To my best recollection, it
11 would be for two -- for at least two years
12 plus the current year.

13 Q. Now, if a patient had
14 prescriptions filled at multiple Giant Eagle
15 pharmacies and there were DURs that were
16 flagged, is there a central location where
17 that patient data field is collected in one
18 table?

19 A. I am unaware if that
20 prescription -- if the DUR information is
21 captured among the RX.com data to be
22 transferred to another location.

23 Q. Well, forgive me if I have this
24 wrong, but when you said -- when you just
25 testified that the DURs that were flagged, my

1 understanding is that those were stored at a
2 local level, which would be the store,
3 correct?

4 A. That is correct.

5 Q. You're not familiar of whether
6 the DUR flags are captured at RX.com?

7 A. As I previously stated, that is
8 correct.

9 Q. And you're not aware of whether
10 the DUR flags are stored at the data
11 warehouse?

12 A. That is correct.

13 Q. Are the tables that are stored
14 at -- regarding DUR flags at the store
15 location, is that the only place historically
16 that Giant Eagle could find DUR flags by
17 patient?

18 A. To my best knowledge, that is
19 correct.

20 Q. If I wanted to log on -- if at
21 the store level I wanted to log on on the PDX
22 system to look at a specific patient history,
23 is there any fields capturing information on
24 historical DURs?

25 A. Do you mean for a specific

1 patient, sir?

2 Q. Yes, sir.

3 A. Yes, you would be able to --
4 you would be able to run a report for a
5 specific patient showing all DURs related to
6 that patient for the time period that
7 information is stored on the server.

8 Q. At that specific store,
9 correct?

10 A. That is correct.

11 Q. And, sir, how would I
12 understand about the DURs that are flagged on
13 that local server of what specific
14 information was kept in those tables?

15 A. I'm sorry, I don't understand
16 your question.

17 Do you mean how you would --
18 could you rephrase your question, please?

19 Q. What fields are -- let's do it
20 this way.

21 What information is kept in the
22 tables that a per-patient report can be
23 pulled on DUR flags at that specific store?

24 A. The notes for the -- the notes
25 for the DUR that were entered by the

1 pharmacist would be able to be captured. The
2 reason for the -- the reason for the DUR, the
3 medication for the DUR, the patient -- the
4 patient info -- the patient and the
5 prescription would be captured.

6 Q. Okay. Other than the notes on
7 the DURs, what other information would be
8 kept at the table that a report can be run on
9 a specific patient on the DUR flags at that
10 specific store?

11 MR. KOBRIN: Object to form.

12 Asked and answered.

13 THE WITNESS: As I previously
14 answered, the notes related to that
15 DUR, the reason for the DUR, the
16 medication and the patient would show
17 for that information.

18 QUESTIONS BY MR. MOUGEY:

19 Q. That's it? Notes and the
20 medication and the patient. That's all the
21 information that's kept in the table on the
22 DUR flags?

23 A. The prescription -- the
24 prescription number would be attached to
25 the -- would be attached to the medication.

1 Q. Okay. Anything else?

2 A. And potentially -- and again,
3 to my best recollection, the date the
4 prescription was filled.

5 Q. How about the actual
6 information pulled from PDX and Medi-Span?

7 A. As I previously stated, the
8 reason for the DUR would be captured.

9 Q. In the same table?

10 A. To my best knowledge, that is
11 correct.

12 Q. And whether or not the DUR was
13 overridden, would that be in the table?

14 A. If you are referencing the note
15 that the pharmacist would have entered, yes,
16 that would be captured on the local server
17 data.

18 Q. No, I'm not referencing another
19 note. I'm asking you if the reason for the
20 override outside of the notes would be
21 captured.

22 A. As I previously answered --

23 MR. KOBRIN: Object to form.

24 THE WITNESS: -- about the --

25 if you're asking whether or not the

1 notes that the pharmacist entered in
2 the DUR note field would be captured,
3 that is correct.

4 QUESTIONS BY MR. MOUGEY:

5 Q. Right.

6 No, I'm not asking about the
7 notes. I get it that everything under the
8 sun is kept in the notes.

9 What I'm asking for, is there a
10 reason for the override, outside of the notes
11 stored in the table?

12 MR. KOBRIN: Object to form.
13 Vagueness as to what you mean by
14 "override."

15 THE WITNESS: If you're -- just
16 to clarify your question. If you're
17 asking the documentation that the
18 pharmacist entered in the note, which
19 could be the reason why -- what the
20 pharmacist resolved the DUR, that
21 information would be captured within
22 the DUR note field.

23 QUESTIONS BY MR. MOUGEY:

24 Q. Yes, sir.

25 Outside of the notes field, if

1 the DUR flag is resolved or overridden, is
2 that captured anywhere else in the tables
3 that you're referencing?

4 A. Outside of the DUR note field,
5 the reason for the pharmacist resolving the
6 DUR would not be captured in another spot.

7 MR. KOBRIN: How much time have
8 we got left on the record?

9 QUESTIONS BY MR. MOUGEY:

10 Q. Mr. Miller, if -- in the
11 refusal to fill, is there anywhere
12 information is stored or kept, capturing or
13 collecting the reason why a prescription
14 wasn't filled?

15 A. As I previously mentioned, when
16 a prescription is deactivated, there are
17 radio buttons that the pharmacist can choose
18 if -- stating pharmacist discretion, handed
19 patient hard copy back, prescriber canceled
20 prescription. And then there is additional
21 open note feeds that a pharmacist can enter
22 additional information there.

23 Q. Is that answer the same if I
24 narrowed the refusal to fill down as the
25 pharmacist refusing to fill a prescription?

1 A. To -- just to clarify, just to
2 make sure we're speaking the same lingo, do
3 you mean is that radio button data captured
4 somewhere?

5 Q. The reason why. You've
6 mentioned several reasons -- you've mentioned
7 several reasons why a prescription wasn't
8 filled.

9 Is there a place that the data
10 is collected per patient for determining over
11 time why prescriptions weren't filled?

12 A. Yes. Those radio buttons would
13 be captured on the local server. And to the
14 best of our knowledge, that information is
15 kept on -- or updated on an -- in a table
16 within data warehouse.

17 MR. MOUGEY: Sorry. I'm going
18 to take just a 30-second break and
19 look at an answer.

20 If you want Mr. Kobrin's
21 question about how much time we have,
22 that would be more than fine.

23 VIDEOGRAPHER: The time right
24 now is 4:11 p.m. We are off the
25 record.

1 (Off the record at 4:11 p.m.)

2 VIDEOGRAPHER: The time right
3 now is 4:12 p.m. We are back on the
4 record.

5 QUESTIONS BY MR. MOUGEY:

6 Q. Mr. Miller, do you believe that
7 documentation with the professional judgment
8 from the pharmacist is required to be notated
9 in Giant Eagle's PDX system?

10 MR. KOBRIN: Object to form.

11 THE WITNESS: Mr. Mougey, to
12 clarify your question, what
13 professional judgment?

14 QUESTIONS BY MR. MOUGEY:

15 Q. Any.

16 A. I think it's -- you know,
17 it's -- the professional judgment of the
18 pharmacist should be up to the professional
19 judgment of the pharmacist to enter any notes
20 that they feel are necessary.

21 Q. Mr. Miller, go to Bates
22 number 808 on Exhibit 6. I think you still
23 have it in front of you. At the bottom of
24 the page under the documentation.

25 A. I'm sorry? Okay.

1 Q. Are you there under
2 documentation, Mr. Miller, on Bates
3 number 808?

4 A. That's on -- you said page 808,
5 and then that's page 3 of the document,
6 correct?

7 Q. It's up on the screen in front
8 of you, Mr. Miller.

9 A. Page 808, yes.

10 Q. Okay. Under documentation it
11 says, "The pharmacist must document the steps
12 they have taken to verify questionable
13 prescriptions, including any calls to the
14 prescriber, conversations with the patient,
15 medication history review, and notate on the
16 prescription itself or in the computer system
17 utilizing appropriate notes fields. This
18 documentation must include: name, first and
19 last, of the individual with whom you spoke;
20 date and time of the conversation; the phone
21 number used to call the provider; brief
22 summary of the substantive discussions
23 {sic}."

24 Did I get that right?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: I see that.

2 QUESTIONS BY MR. MOUGEY:

3 Q. And the last note on that page,
4 808 of Exhibit 6: "When accessing a PDMP
5 note, the date and reason for accessing the
6 database."

7 Do you see that, sir?

8 A. I do.

9 Q. If a pharmacist, an intern or a
10 tech made a notation on the prescription
11 itself, what happened to the prescription?

12 A. If a -- if a document -- if it
13 was documented actually on the physical
14 hardcopy prescription, that prescription
15 would be -- would be filed as we've -- had
16 previously discussed.

17 Q. You mean filed in a paper file,
18 in a manila folder with a hundred other ones,
19 manila folder by manila folder, correct?

20 A. That is correct. That's how
21 prescriptions are filed.

22 Q. And so the store level,
23 pharmacist, intern, techs, had discretion of
24 whether to document questionable
25 prescriptions in hardcopy form filed at the

1 store level or on the computer system
2 utilizing appropriate note fields. Correct,
3 sir?

4 A. Relating to the specific
5 document regarding guidelines, this states
6 that the pharmacist.

7 Q. So a pharmacist, when
8 documenting the steps that they have taken to
9 verify questionable prescriptions, including
10 calls to the prescriber, conversations with
11 the patient, medication history review, they
12 had the option at Giant Eagle of making a
13 note on the hardcopy prescription which was
14 filed away at the store level or on the notes
15 fields in the computer system.

16 A. Yes, the pharmacist had the
17 option to document on -- in different ways
18 to -- if they had to verify a questionable
19 prescription.

20 Q. And if a questionable
21 prescription arose at one of the Giant Eagle
22 pharmacies, yet the documentation was on hard
23 copy in another Giant Eagle pharmacy, that
24 pharmacist would have no way of referencing
25 those handwritten notes on the hardcopy

1 prescription during the fill process,
2 correct?

3 MR. KOBRIN: Object to form.

4 THE WITNESS: Are you talking
5 about the same prescription being
6 filled at a different location?

7 QUESTIONS BY MR. MOUGEY:

8 Q. No, sir.

9 I'm asking if a pharmacist
10 answering questions about a questionable
11 prescription made notes on a hardcopy
12 prescription and those notes were filed away
13 at that specific Giant Eagle, a subsequent
14 pharmacist faced with a questionable
15 prescription from the same patient wouldn't
16 have access to those handwritten notes stored
17 at another Giant Eagle pharmacy, correct?

18 A. Just to clarify your question,
19 the patient -- the patient would be
20 presenting a new prescription at the other
21 pharmacy?

22 Q. Yes, a new prescription,
23 another prescription down the line.

24 Pharmacist number 2 would not
25 have access to notes that that pharmacist

1 answered verifying a questionable
2 prescription at another Giant Eagle store
3 prior in time, correct?

4 A. The pharmacist at store --
5 at -- the second pharmacist would utilize his
6 or her professional judgment regarding that
7 second prescription.

8 Q. Yes, sir, but that's not what I
9 asked.

10 What I asked was, is that a new
11 prescription that was questionable, presented
12 to a pharmacist at Giant Eagle X, that
13 pharmacist would not have access to notes
14 taken by another pharmacist at another Giant
15 Eagle if they're recorded in hard copy when
16 answering questions about questionable
17 prescriptions in regards to opiates.
18 Correct, sir?

19 A. Other than that -- the second
20 pharmacist at that location exercising his or
21 her professional judgment, they would not
22 have access to the documented notes.

23 However, they could always call
24 the other pharmacy to get those documented
25 notes on the hard copy.

1 Q. So essentially the hardcopy
2 notes that were collected store by store by
3 store, patient by patient by patient,
4 prescription by prescription by prescription,
5 were on an island from one Giant Eagle
6 pharmacy to another Giant Eagle pharmacy.
7 Correct, sir?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: As I
10 previously -- as I previously stated,
11 that pharmacist at another store would
12 exercise his or her professional
13 judgment, and by seeing the patient
14 profile would be able to recognize
15 that previous prescription was filled
16 at another location, and in theory
17 could call that other location to look
18 at any notes on the hard copy if they
19 felt necessary while exercising their
20 professional judgment.

21 QUESTIONS BY MR. MOUGEY:

22 Q. Yeah, in theory. Correct, sir?

23 A. That would be an option for
24 that pharmacist to do.

25 Q. Yes, sir.

1 As opposed to specific fields
2 for specific red flags that were kept in a
3 database could easily have been referenced by
4 a pharmacist at any of the Giant Eagle
5 locations. Correct, sir?

6 MR. KOBRIN: Object to form.

7 THE WITNESS: I can't -- I
8 can't speculate on that answer, sir.

9 QUESTIONS BY MR. MOUGEY:

10 Q. I'm not asking you to
11 speculate, sir.

12 We know already that the
13 PDX-system-specific fields, that information
14 is accessible by any pharmacist at any of the
15 Giant Eagle locations. Correct, sir?

16 A. Information relating to the
17 patient profile in the prescription history
18 of that patient could, yes.

19 Q. Yes, sir.

20 So as opposed to the hardcopy
21 notes that are stored in paper, pharmacy by
22 pharmacy, if there were specific fields for
23 red flags in the PDX system, pharmacists from
24 all over Giant Eagle would be able to
25 immediately see prior red flags. Correct,

1 sir?

2 MR. KOBRIN: Object to form.

3 THE WITNESS: I would say that
4 would be -- based on the note fields
5 that are attached on a patient profile
6 or image notes attached to a
7 prescription, which appear on the hard
8 copy as an image note, pharmacists do
9 have the ability to see some notes
10 that would be attached to a
11 prescription within the current
12 computer system.

13 QUESTIONS BY MR. MOUGEY:

14 Q. But that's not what I'm asking
15 you, sir.

16 What I'm asking you, sir, is
17 about hardcopy notes where the pharmacist
18 performed due diligence pursuant to a
19 questionable prescription that was stored in
20 paper.

21 We on same page?

22 A. Yes. The hardcopy prescription
23 is stored in paper, correct.

24 Q. A specific field for a -- red
25 flags stored on Giant Eagle's database would

1 be easily accessible by any pharmacist,
2 technician or intern at other Giant Eagle
3 locations. Correct, sir?

4 MR. KOBRIN: Object to form.
5 Objection. Beyond the scope.

6 THE WITNESS: Again, if we're
7 talking about a hypothetical
8 situation, I can't speculate -- I
9 can't speculate to that.

10 QUESTIONS BY MR. MOUGEY:

11 Q. I'm not asking you to
12 speculate, sir.

13 Giant Eagle's system right now,
14 PDX, can be viewed on specific data fields
15 across the entire system per patient,
16 correct?

17 A. That is correct.

18 Q. And if fields were created at
19 any point in time at Giant Eagle pertaining
20 to red flags, those red flags could be seen
21 around the entire Giant Eagle system.
22 Correct, sir?

23 A. Again, I can't speculate on
24 that because I'm not sure what information
25 RX.com would capture to be viewed among the

1 Giant Eagle system.

2 Q. Sir, just like the flags
3 that -- just like fields that have evolved
4 over time, Giant Eagle could have created
5 specific data fields for red flags, and those
6 could be viewed across the entire Giant Eagle
7 system. Correct, sir?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: You're kind of
10 going back to a previous --

11 MR. KOBRIN: Beyond the scope.

12 THE WITNESS: To go back to a
13 previous conversation, we license the
14 PDX software. We would not have the
15 ability to create additional fields
16 within the -- within that software
17 platform.

18 MR. KOBRIN: I think we're out
19 of time.

20 MR. MOUGEY: I'm going to
21 get -- I'd like an answer to this last
22 question.

23 MR. KOBRIN: Yeah, yeah, no,
24 that's fair. I'm not cutting you off.
25 I just wanted to flag it, to --

1 MR. MOUGEY: Thank you.

2 MR. KOBRIN: -- use the term.

3 QUESTIONS BY MR. MOUGEY:

4 Q. I'm not asking you whether or
5 not fields -- if you had the ability through
6 a third-party vendor to create fields.

7 All I'm simply asking you, sir,
8 is that fields were created on PDX's system;
9 can be seen by all the pharmacists at Giant
10 Eagle. Correct, sir?

11 A. Within the current system, that
12 is correct.

13 MR. MOUGEY: Thank you. I
14 don't have any further questions.

15 MR. KOBRIN: I'll take one
16 quick bathroom break and -- we can
17 take two minutes and then -- if we
18 come back, if I have any redirect,
19 it's going to be very short.

20 MR. MOUGEY: Hey, just also --

21 MR. KOBRIN: Should we go off
22 real quick? Sorry, I think we're
23 still on the record.

24 MR. MOUGEY: No, I want to stay
25 on the record.

1 MR. KOBRIN: Okay.

2 MR. MOUGEY: My notes on the
3 handwritten chart that we filled in
4 I've marked as Miller 7. And we'll
5 scan those in like we've done in
6 previous days and shoot them to the
7 court reporter.

8 MR. KOBRIN: Okay. I mean, my
9 position is pretty clear on the record
10 that that doesn't constitute
11 testimony, but I understand that.

12 MR. MOUGEY: So noted. Thank
13 you.

14 Do you want to break, you said?

15 MR. KOBRIN: Yeah. Let's go
16 off the record very quickly, if that's
17 okay.

18 Is that okay with everybody?

19 Hearing no objection.

20 VIDEOGRAPHER: The time right
21 now is 4:26 p.m. We are off the
22 record.

23 (Miller Exhibit 7 marked for
24 identification.)

25 (Off the record at 4:26 p.m.)

1 VIDEOPHOTOGRAPHER: The time right
2 now is 4:30 p.m. We are back on the
3 record.

4 CROSS-EXAMINATION

5 QUESTIONS BY MR. KOBRIN:

6 Q. Hi, Mr. Miller. How are you
7 doing?

8 A. I'm well. Thank you.

9 Q. I just have a couple of quick
10 follow-up questions. We'll keep it short.

11 Earlier today, plaintiff's
12 counsel asked you about whether Giant Eagle's
13 dispensing system had specific fields,
14 specific dedicated fields, a variety of
15 specific field questions for each red flag
16 that he talked about, some of which were
17 listed in the controlled substance dispensing
18 guideline.

19 Do you remember those
20 questions?

21 A. I do.

22 Q. Mr. Miller, do pharmacists at
23 Giant Eagle need a specific field for each of
24 those red flags in order to recognize the red
25 flag when it is presented by a patient with a

1 prescription?

2 A. I don't believe so.

3 Pharmacists have the ability to exercise
4 their professional judgment to identify red
5 flags. And outside of the list that -- or
6 contained in the dispensing -- the controlled
7 substance dispensing guidelines, there may be
8 other red flags that a pharmacy -- excuse me,
9 a pharmacist discovers while utilizing their
10 professional judgment, such as in the current
11 time frame, a hardcopy prescription may be --
12 may throw up a little bit more of a red flag
13 than receiving a electronic prescription from
14 a prescriber.

15 Q. Is that because hardcopy
16 prescriptions are not as common as electronic
17 prescriptions for controls?

18 A. Currently the more -- the trend
19 is to see electronic prescriptions for
20 controls.

21 Q. Getting back to my initial
22 question, do pharmacists at Giant Eagle need
23 a specific field for each red flag in order
24 to collect the relevant data related to that
25 red flag so that they can safely dispense

1 prescriptions?

2 A. There are adequate note fields
3 within the dispensing software, including an
4 image note, documentation on the hard copy,
5 this fills note, all fills note, any note
6 that could be entered into the prescriber
7 field or a patient profile note that can
8 document the professional judgment of the
9 pharmacist.

10 Q. Similarly, Mr. Miller, do
11 pharmacists at Giant Eagle need a specific
12 field for every potential red flag in order
13 to decide not to fill a prescription?

14 A. No. The pharmacist has the
15 ability to exer -- while exercising their
16 professional judgment to make that
17 determination.

18 Q. And finally, is it necessary to
19 have specific fields for each red flag in
20 order to successfully address that red flag
21 and either not dispense or resolve it?

22 A. During the review of that
23 prescription while a pharmacist is exercising
24 their professional judgment, in addition to
25 looking at an external database such as a

1 PDMP, the pharmacist has the ability to
2 determine if red flags are present and
3 whether or not to resolve or to fill a
4 prescription.

5 Q. So they don't need a particular
6 field related to that red flag so that they
7 can check a box or fill in a particular field
8 in order to resolve that issue?

9 A. That is correct.

10 Q. Finally, just before I started
11 asking you questions, plaintiff's counsel was
12 asking you questions about the face of a hard
13 copy of a prescription.

14 Do you remember that?

15 A. I do.

16 Q. Is it common practice that the
17 prescription gets scanned into the computer
18 system so that the face of the image is
19 copied into the PDX system?

20 A. Once -- when we made the
21 transition from -- to RapidFill in the 2013
22 time frame, yes, prescription images would be
23 scanned into the computer system.

24 Q. And if someone makes a notation
25 on the prescription, it's rescanned into the

1 PDX system with that notation on it, isn't
2 it?

3 A. That's common practice.

4 Q. So if somebody at another
5 pharmacy wanted to see the hardcopy notation,
6 they wouldn't necessarily have to go to the
7 hardcopy files at the other pharmacy
8 location. They could look on the computer
9 system and see the scan of the prescription
10 with the notes on it, couldn't they?

11 A. From the 2013 time frame, that
12 is -- yes.

13 MR. KOBRIN: Thank you. That's
14 all I've got.

15 REDIRECT EXAMINATION

16 QUESTIONS BY MR. MOUGEY:

17 Q. Mr. Miller, just real quick,
18 just a couple of follow-ups.

19 I'm trying to keep track of the
20 manual reviews.

21 So in exercising the
22 professional discretion, a pharmacist would
23 need to review the patient note field,
24 correct, sir?

25 A. That could be part of the

1 professional judgment review.

2 Q. The prescription note field,
3 correct, sir?

4 MR. KOBRIN: Object to form.
5 Beyond the scope.

6 THE WITNESS: That could be
7 part of a pharmacist exercising his or
8 her professional judgment.

9 QUESTIONS BY MR. MOUGEY:

10 Q. The DUR note field, correct,
11 sir?

12 MR. KOBRIN: Object to form.
13 Beyond the scope. Beyond the scope of
14 the topics and beyond the scope of
15 redirect.

16 THE WITNESS: That could be --
17 that could be an option for the
18 pharmacist to review within their
19 professional judgment.

20 QUESTIONS BY MR. MOUGEY:

21 Q. And within the professional
22 judgment, a fourth or fifth note field, the
23 refusal to fill note field, correct, sir?

24 MR. KOBRIN: Object to form.
25 Beyond the scope of the topics and of

1 the redirect.

2 THE WITNESS: Yes, that is
3 information that the pharmacist could
4 review utilizing their professional
5 judgment.

6 QUESTIONS BY MR. MOUGEY:

7 Q. And at Giant Eagle, in order to
8 exercise professional judgment of the
9 pharmacist, they would have to look at OARRS
10 data after 2011. Correct, sir?

11 MR. KOBRIN: Object to form,
12 and objection as beyond the scope of
13 both the redirect and the topics.

14 QUESTIONS BY MR. MOUGEY:

15 Q. Correct, sir?

16 A. That would be part of the
17 pharmacist exercising their professional
18 judgment during a drug utilization review.

19 Q. And according to your testimony
20 with Mr. Kobrin, you'd also have the
21 pharmacist, in exercising their professional
22 judgment, would also potentially have to look
23 at a hardcopy scan of the prescriptions with
24 notes there. Correct, sir?

25 MR. KOBRIN: Object. Beyond

1 the scope.

2 THE WITNESS: While exercising
3 a pharmacist's professional judgment,
4 that is another avenue a pharmacist
5 could review.

6 QUESTIONS BY MR. MOUGEY:

7 Q. In exercising the scope of
8 their professional judgment, the pharmacist
9 would potentially have to -- also have to
10 look at the patient history. Correct, sir?

11 MR. KOBRIN: Objection. Beyond
12 the scope of both the redirect and the
13 topics.

14 THE WITNESS: That is another
15 avenue where a pharmacist can review
16 information regarding their
17 professional judgment.

18 QUESTIONS BY MR. MOUGEY:

19 Q. If the pharmacist had questions
20 from a prior prescription, according to you,
21 sir, he or she might have to pick up the
22 phone and call another Giant Eagle pharmacy,
23 have them pull a handwritten note in a paper
24 file to reference that. Correct, sir?

25 MR. KOBRIN: Object to form.

1 Misrepresents prior testimony. Beyond
2 the scope of the redirect. Beyond the
3 scope of the topics.

4 And I think you're out of time
5 under the case management order, but
6 continue.

7 QUESTIONS BY MR. MOUGEY:

8 Q. Go ahead, Mr. Miller.

9 A. That would be a possibility.

10 Q. When exercising their
11 professional judgment, the pharmacist would
12 have to also look at information related to
13 the prescriber. Correct, sir?

14 MR. KOBRIN: Object to form,
15 "have to." Objection, beyond the
16 scope of the redirect and the topics.
17 And objection, we're out of time.

18 THE WITNESS: That is -- that
19 is information a pharmacist could
20 review in their utilization of their
21 professional judgment.

22 QUESTIONS BY MR. MOUGEY:

23 Q. So just in the last three, four
24 minutes, you and I together have identified
25 at least ten different places on Giant

1 Eagle's system, including picking up the
2 phone and calling another pharmacy, when
3 exercising their professional diligence with
4 whether to figure out to fill an opiate
5 prescription. Correct, sir?

6 MR. KOBRIN: Object to form.
7 Beyond the scope of the topics and the
8 redirect. We're out of time. And
9 objection because it misrepresents
10 prior testimony.

11 THE WITNESS: Those are all
12 things that a pharmacist could review
13 in the exercising of their
14 professional judgment.

15 MR. MOUGEY: I don't have any
16 further questions. Thank you.

17 MR. KOBRIN: Thank you. Good
18 to go.

19 VIDEOGRAPHER: The time right
20 now is 4:39 p.m. We are off the
21 record.

22 - - - - -

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1 (Deposition concluded at 4:39 p.m.)

2 MR. KOBRIN: Yes, I think we
3 probably both want a rough. Thank
4 you.

5 - - - - -

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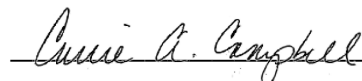
25

CERTIFICATE

I, CARRIE A. CAMPBELL, Registered
Diplomate Reporter, Certified Realtime
Reporter and Certified Shorthand Reporter, do
hereby certify that prior to the commencement
of the examination, Christopher Miller, was
duly sworn by me to testify to the truth, the
whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the
foregoing is a verbatim transcript of the
testimony as taken stenographically by and
before me at the time, place and on the date
hereinbefore set forth, to the best of my
ability.

I DO FURTHER CERTIFY that I am
neither a relative nor employee nor attorney
nor counsel of any of the parties to this
action, and that I am neither a relative nor
employee of such attorney or counsel, and
that I am not financially interested in the
action.



CARRIE A. CAMPBELL,
NCRA Registered Diplomate Reporter
Certified Realtime Reporter
Notary Public

Dated: February 19, 2021

1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it. You are signing
10 same subject to the changes you have noted on
11 the errata sheet, which will be attached to
12 your deposition.

13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.

20

21

22

23

24

25

1 ACKNOWLEDGMENT OF DEPONENT

2
3
4 I, _____, do
hereby certify that I have read the foregoing
5 pages and that the same is a correct
transcription of the answers given by me to
6 the questions therein propounded, except for
the corrections or changes in form or
7 substance, if any, noted in the attached
Errata Sheet.

8
9
10
11
12 _____
Christopher Miller Date

13
14
15 Subscribed and sworn to before me this
16 _____ day of _____, 20 ____.

17 My commission expires: _____
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19 Notary Public
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ERRATA

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